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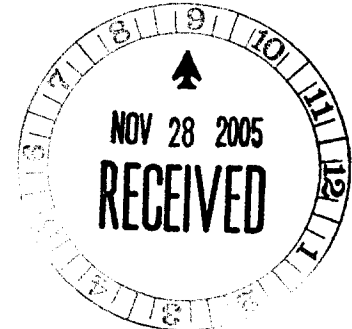
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November 25, 2005

Hon. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423



Re: Maumee & Western Railroad Company and RMW Ventures, LLC – Petition for Declaratory Order – CSX Transportation, Inc.; Crossing Rights at Defiance, OH; Finance Docket No: 34527

Dear Sir:

Enclosed please find Petitioners' Rebuttal Statement of Facts and Legal Argument (Public) with a separate Confidential and Highly Confidential Document Appendix, Volume I and II and a Verified Statement of Spencer N. Wendelin (Confidential) for filing in the above captioned matter.

Please time stamp the copy of this cover letter and return it in the enclosed self addressed, stamped envelope. If there are any questions, please contact the undersigned.

Respectfully submitted,

RICHARD R. WILSON, P.C.

A handwritten signature in black ink, appearing to read 'Richard R. Wilson'.

Richard R. Wilson, Esq.
Attorney for Petitioners

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Enclosures

xc: Louis E. Gitomer, Esq.

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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

PETITIONERS' REBUTAL STATEMENT OF FACTS AND LEGAL ARGUMENT
(PUBLIC)

Filed by:
Richard R. Wilson, Esq.
Attorney for Maumee & Western
Railroad Company

Richard R. Wilson, P.C.
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Dated: November 29, 2005

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BEFORE THE
SURFACE TRANSPORTATION BOARD

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PETITION OF MAUMEE & WESTERN RAILROAD COMPANY AND RMW VENTURES,
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PEITIONERS' REBUTTAL STATEMENT OF FACTS AND LEGAL ARGUMENT
(PUBLIC)

LEGAL ARGUMENT

A. CSXT has breached its agreement with Petitioners and the Board to repair and reconnect the crossing diamonds at Defiance, Ohio.

This Petition for Declaration or Revocation of CSXT crossing rights at Defiance, Ohio was filed by Petitioners after three years of unsuccessful efforts to resolve this matter with CSX Transportation, Inc. ("CSXT"). Notwithstanding the justifications offered by CSXT regarding the operating and financial benefits from the removal of the Defiance, Ohio crossing diamonds, the simple facts remain that CSXT has breached its written commitment of July 19, 2002 to the Board's Office of Compliance and to Petitioners to repair the diamonds which CSXT "temporarily removed". Without these diamonds, Maumee & Western Railroad Company ("M&W") has been unable to move equipment across the diamonds to repair embargoed track and to serve shippers west of the diamonds. CSXT has asserted that M&W did not follow through on a schedule to repair the diamonds but that is no excuse for CSXT's failure to honor its commitment to the Board and to Petitioners. There simply was no need for any extensive coordination or scheduling with M&W for CSXT to undertake the repairs needed to place these diamonds back in service in July 2002.

As demonstrated by the CSXT documents produced through discovery in this proceeding, Mr. Thoburn, Mr. Davis and other CSXT officials sought to avoid the commitment to repair and restore the crossing diamonds made by CSXT Attorney Humes in his letter of June 19, 2002 to Mr. Clemmons. CSXT's evasive conduct is described in detail by Mr. Wendelin in his verified statement and is thoroughly substantiated by CSXT's internal documents. CSXT has engaged in a persistent effort to delay and avoid incurring any expense associated with its June 19, 2002 commitment.

This effort continues with the October 27, 2005 response filed by CSXT with the Board. In its response, CSXT extends a proposal for alternative crossing arrangements which it discussed with M&W as early as December 10, 2003 in a meeting between Mr. Wendelin and Mr. Thomas T. Schmidt, then the CSXT Vice-President of Engineering. See M&W Exhibit L (M&W Petition – July 12, 2004) Despite representations that CSXT would respond promptly to M&W's need for a restored crossing, CSXT internal documents demonstrate that CSXT engineers, including Mr. Thoburn, had no interest in developing any prompt response to the Defiance crossing situation. Instead, the CSXT documents reveal that CSXT developed the alternative crossing scenario to provide maximum delay and obstruction of M&W service to the Defiance Industrial Park while avoiding the necessity of CSXT incurring the cost of restoring the crossing diamonds.

The CSXT proposal of October 27, 2005 is operationally unworkable as explained by Mr. Snyder and Mr. Wendelin. It is further conditioned on M&W upgrading its Defiance to Cecil, Ohio track to FRA Class I status before CSXT will construct a connecting track to M&W's line. CSXT knows full well that many Class III carriers operate on excepted track and that its Class I track condition is unnecessary and imposes a financial obstacle of millions of dollars which M&W can not afford. Having agreed in 2002 to repair and restore the crossing diamonds, CSXT incurred a duty of good faith and fair dealing in its performance of that agreement. Restatement

2d of Contracts §225. Such a duty is also compelled by CSXT's statutory common carrier status which is infused with the public interest in honest management as reflected in the national rail transportation policy. 49 U.S.C. §10101(9). Subparagraph §205(d) of the Restatement 2d of Contracts states:

d. *Good faith performance.* Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified. But the obligation goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible, but the following types are among those which have been recognized in judicial decisions: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance. (Emphasis added)

Given CSXT's 2002 commitment to the Board and M&W, subsequent efforts by CSXT to delay and avoid prompt replacement of the crossing diamonds at Defiance, Ohio (including its October 27, 2005 proposal filed with the Board) have been undertaken in bad faith to perpetuate the breach of its agreement to replace the diamonds.

B. Reinstallation of the Defiance crossing diamonds is consistent with the public interest and with National Rail Transportation Policy.

Reinstallation and maintenance of the crossing diamonds at Defiance, Ohio by CSXT is consistent with the public interest and will promote the National Rail Transportation Policy. ("RTP") Under 49 U.S.C. §10101 in regulating the railroad industry, it is the policy of the United States Government (1) to allow to the maximum extent possible competition and the demand for services to establish reasonable rates for transportation by rail;... (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues as determined by the Board; (4) to ensure the development and continuation of a sound railroad transportation system with effective competition among rail carriers and with other modes; (5) to foster sound economic conditions in transportation and to ensure effective competition and

coordination between rail carriers and other modes; and (9) to encourage honest and efficient management of railroads. All of these policy objectives are implicated in this proceeding.

In furtherance of the RTP, connecting and intersecting tracks of railroad carriers receive special attention under ICC Termination Act of 1995.¹ Section 10901 specifies the conditions under which one rail carrier may construct its line across the tracks of another rail carrier and provides for Board intervention in the event that the carriers cannot agree on crossing terms and conditions. Under 49 U.S.C. §10742, rail carriers must provide reasonable, proper and equal facilities for the interchange of traffic between connecting lines. Section 10744 specifies that a rail carrier may not enter into a combination or arrangement to prevent the carriage of freight from being continuous from the place of shipment to the place of destination whether by change of time schedule, carriage and different cars or by other means. This section states that the carriage of freight by rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage or interruption is not made in good faith for a necessary purpose and with the intent of avoiding or unnecessarily interrupting continuous carriage or evading this part. Section 11103 provides that a rail carrier be required to construct, maintain and operate on reasonable conditions switch connections to connect a branch line or private side track with its railroad so long as the provision of such a connection meets the standards set forth in that provision.

These statutory provisions, and the RTP they serve, recognize that common carrier rail service in the United States is provided by private companies which connect to, interchange with and cross over the lines of other railroad companies on a routine and recurring basis in a

¹ It has long been recognized that the STB and the ICC before it have exclusive jurisdiction with respect to the physical connections of tracks of interstate carriers. Alabama v. V.R. Co. v. Jackson & E.R.Co., 271 U.S. 244 (1926)

nationally integrated rail transportation network². Accordingly, common carrier railroads must both compete and cooperate with each other, particularly where their facilities intersect, in order to serve the public interest and public safety. In most circumstances, economic self interest on the part of both carriers and a recognition of their statutory common carrier obligations permit parties to privately negotiate crossing arrangements. Occasionally, however, situations arise where one carrier with significant resources and market power seeks to take advantage of a smaller carrier with limited resources and unequal bargaining power. This is such a case.

Based on confidential proprietary information improperly obtained from the Ohio Rail Development Commission³, CSXT representatives became aware of the financial, operating and maintenance challenges faced by M&W on its rail line between Defiance and Cecil, Ohio. Seizing on these M&W's difficulties and tiring of rerouting M&W traffic, CSXT decided to create further impediments to M&W service in the Defiance, Ohio area. This was done by first disconnecting and then removing the diamond crossings at Defiance, Ohio rather than working with M&W to maintain those crossing diamonds. As indicated by Mr. Snyder, M&W's engineering witness, the conditions originally cited by CSXT for disconnecting the diamonds from M&W's track, were caused solely by the high traffic volumes, speed, and weight of CSXT trains operating on its double track main line through the crossings. CSXT used the pretense that this disconnection was merely temporary and would be repaired as soon as M&W required use of the line for rail traffic. However, when M&W made such a request, CSXT went to extensive lengths to avoid its prior commitment. Instead, CSXT developed an alternative rail crossing proposal which seriously impedes M&W's

² In recognition of the paramount importance of a uniform and integrated national rail network, Congress has provided the Board with broad preemptive jurisdiction to regulate that network. See City of Crecde, Co. – Petition for Declaratory Order, STB F.D. 34376, May 3, 2005. Petition of CSX Transportation, STB F.D. 34662, March 14, 2005, May 3, 2005

³ Under Ohio statutes, it is unlawful and unethical for ORDC officials to disclose to third parties proprietary financial information submitted to the Commission in the course of the proper conduct of ORDC business. ORC. Ann. 102.03(B), ORC Ann 4981.02(E)

rail operation and creates potential safety hazards on the CSXT main line. Despite written denials by CSXT officials of any commercial motivations and representations that the removal of the diamonds was done solely for safety reasons, CSXT's internal documents demonstrate that CSXT was primarily concerned about the cost of reinstalling and maintaining the diamonds and how it could devise a cheaper alternative crossing proposal that would create obstacles to M&W competitive rail service at the Defiance Industrial Park. (See Volume II, Highly Confidential Appendix 2004-2005)

Before CSXT double tracked this crossing, the CSXT double track main line switched onto a single track to cross the IHRC line in Defiance, Ohio. This crossing had long been a single track crossing. When CSXT initially constructed the second crossing in 2000, it did not seek M&W's consent and M&W did not object to the extension of CSXT's second main line track via a second diamond at Defiance, Ohio because there had been little problem with CSXT's existing crossing and the well recognized obligation on the part of CSXT as the crossing carrier to maintain its crossing facilities.

In the absence of any written agreement with CSXT regarding its expanded occupancy of RMW's property and the construction of a second crossing over M&W's line at Defiance, Petitioners implied consent to CSXT's occupancy can be withdrawn upon the breach by CSXT of its obligation to maintain its crossing diamonds in a manner that would enable M&W to operate on its line using those diamonds at its reasonable operating convenience. M&W withdrew its implied consent for both crossings in December 2002 and revoked the interlocking agreement with CSXT on December 5, 2002, effective December 5, 2003. Since that time, CSXT has been a trespasser on M&W's right-of-way. The failure of CSXT to perform its ongoing maintenance obligations for the crossing diamonds is totally inconsistent with (1) promoting a safe and efficient rail transportation system, (2) development and continuation of a

sound railroad transportation system, (3) effective coordination between rail carriers; and (4) the honest and efficient management of railroads.

M&W's evidence fully demonstrates that restoration of the crossing diamonds at Defiance, Ohio is consistent with the public interest and the procompetitive rail policy enacted by the Congress in 49 U.S.C. §10101. By restoring these crossings, M&W will be able to cross the heavily utilized CSXT main line in the most direct, safe and efficient manner. It will be able to offer improved service to its shippers, obtain direct and efficient access to the Defiance Industrial Park and develop the connection preferred by local development officials into the park. Restoration of the crossing diamond will reconnect the two segments of M&W's line restoring competitive routing options to M&W shippers. It will enable M&W to more effectively rehab its track and offer better rail service to the customers it serves west of the diamonds.

The desire of CSXT to operate its main line tracks at maximum volume and velocities cannot be used to require M&W to suboptimize its rail line, maintain its rail properties to the dictates of CSXT or subject its trains and crews to the dangers of the alternative crossing movement on CSXT's high speed and heavily used main line tracks. In addition to the risks posed by CSXT's rail operations, the crossing movement proposed by CSXT will require M&W to perform this crossing movement by pushing and pulling its trains through four at grade crossings including two additional moves through the at grade crossings at Deatrick Street and Jackson Street. This movement through CSXT's crossover switches and these at grade highway crossings increase the risk of a collision with highway traffic or an M&W derailment on CSXT's main line track.⁴ These risks can be avoided by replacing the crossing diamonds.

⁴ PUC of Ohio/Ohio Rail Development Commission records indicate that CSXT operated 32 thru trains per day and 50 thru trains per night over those crossings. In 2002, Jackson Avenue had an AADT of 734 vehicles and Deatrick Street had an AADT of 3846 vehicles. Each crossing is equipped with mast mounted cross bucks, lights and gates. RISS Crossing Information, www.ohiorail.ohio.gov/item

Simply put, CSXT is part of the national rail transportation network. Being a part of that network imposes responsibilities for system connectivity and public safety on all rail carriers none of which is too big, important or powerful to ignore its network obligations. There is no provision of the ICC Termination Act of 1995 which permits CSXT to unilaterally remove a crossing for whatever purpose and then refuse to repair and replace it until M&W, whose tracks have been severed, agrees to maintain its track to a standard satisfactory to CSXT and then only if M&W can prove a demand for rail service. That conduct and those demands on the part of CSXT are totally inconsistent with national rail transportation policy and the maintenance of a coordinated and interconnected system of common carrier railroads throughout the United States. If the STB permits rail carriers to unilaterally sever the tracks of their competitors, and to refuse restoration of those interconnections or crossings, there can be no integrated national rail transportation system but only a balkanized agglomeration of separate railroads utilizing self help to advance their individual corporate interests at the expense of the public interest. C.f. Ohio Valley Railroad Company – Petition to Restore Switch Connection and Other Relief, STB Finance Docket 34608 (Feb. 23, 2005)

C. CSXT's refusal to reinstall the Defiance crossing diamonds is inconsistent with promoting rail competition.

The Board has recognized in the context of §10901(d) that attempts by one rail competitor through an exorbitant crossing fee to block another rail competitor from entering a rail market are inconsistent with the clearly articulated policy in the rail transportation policy and §10901(d) that the STB advance rail competition. Omaha Public Power District – Petition Under 49 U.S.C. §10901(d), 1996 STB Lexis 216. If the Board has found use of an exorbitant crossing fee to be inconsistent with the RTP and §10901(d), how much more so is the physical removal of two crossing diamonds and the severing of a competing carrier's rail line in a manner that precludes integrated rail operations by that competitor. In Omaha Power, the Board noted that

“we do not believe that we should administer the Congressional policy directing us to promote revenue adequacy at the expense of the clearly articulated policy, in the RTP and §10901(d) that we advance competition.”

CSXT seeks confirmation from the Board for its removal of the crossing diamonds and its alternative crossing proposal so it can realize cost savings and operating improvements at the expense of M&W rail service and competition. The documents produced by CSXT demonstrate that CSXT specifically developed and used its alternative crossing proposal as a means of obstructing M&W rail service to the Defiance Industrial Park in an effort to prevent M&W from providing competing rail service to the industrial park. This is particularly evident in the highly confidential email between CSXT representatives after M&W/RMW commenced its condemnation proceedings to acquire a railroad right of way into the Defiance Industrial Park.

On October 26, 2005, CSXT announced its third quarter 2005 financial results. CSXT reported surface transportation revenues of \$2,125,000,000, a 9.4% increase over third quarter 2004, while CSXT operating income increased a record 46% to \$361,000,000. CSXT's operating ratio improved 4.3%, dropping from 87.3% to 83.%. In light of this impressive performance, there is no financial justification for CSXT's refusal to restore and maintain the Defiance crossing diamonds as a normal cost of doing business on its main east west rail lines. The fact that M&W is not able to conduct its operations and fund its track maintenance program to the dictates and standards of CSXT, does not give CSXT the right to sever M&W's rail line to achieve CSXT's financial, operational and competitive objectives.

In its response, CSXT makes reference to Burlington Northern Santa Fe Railway Company – Petition for a Determination of Compensation and Other Terms, STB Finance Docket 33740 (Sub No. 1) (June 20, 2001). CSXT cites this case in support of its alternative crossing proposal:

In this case, the BNSF's movement over the new configurations serves the same function as the movement over the old configuration... rather, as before, BNSF is merely utilizing the KJRY line as part of a continuous movement from BNSF main line track to BNSF main line track to access its own shippers on its own line.

However, BNSF proves too much. What CSXT omits and what is critical to the BNSF decision is that as a result of flooding, in 1993 cooperative track relocation plans were undertaken by the carriers so that access to the Mooar line would not require BNSF to cross over Bloody Run Creek. Under the terms of that relocation agreement, BNSF's access to the Mooar line was moved east of Bloody Creek and a new cross over was constructed to allow BNSF trains to enter KJRY's track and move through seven switches over approximately one quarter mile of KJRY trackage in order to enter BNSF's Mooar line. This crossing relocation was the result of coordinated, voluntary negotiations between two carriers, it was not unilaterally imposed by one carrier on the other. In BNSF, the dispute arose over KJRY's attempt to charge BNSF a switch rate of \$85 per car or locomotive to use its tracks for its crossing movement. These facts would only arise in the context of the M&W/CSXT dispute if M&W were to agree to the alternative rail proposal advanced by CSXT and then CSXT would try to access a switch charge of \$84 per car or locomotive for M&W transit of the CSXT tracks.

The BNSF case presents another example of an effort by one carrier to charge a crossing fee in an anticompetitive effort to discourage and discriminate against competitive rail service being offered by the other carrier. However, in BNSF, the Board stated:

the parties have raised a variety of issues in this proceeding, but, as we see it, the case raises one fundamental question: whether a railroad may block another railroad from crossing its line to serve shippers that the crossing railroad has a common carrier obligation to serve. We conclude that it does not matter if the track to be crossed is excepted track. Nor does it matter if a license was originally obtained for the crossing track or whether, as in this case, the crossing was constructed well over 100 years ago and has until recently been operated consensually. So long as the crossing does not materially interfere with the operations of the crossed line and is needed to reach shippers that the crossing carrier has an obligation to serve, it may not be blocked. (Emphasis added)

In BNSF the crossed carrier, KJRY, sought to block the crossing carrier, BNSF. In this proceeding, CSXT, the crossing carrier, has physically precluded M&W from conducting its operations over CSXT by removing the crossing diamonds and straight lining CSXT's railroad tracks thereby entirely severing the M&W main line. If this action by CSXT does not constitute "material interference" with M&W operations, then language has lost all meaning.

In BNSF, the Board went on to note:

the language (of §10901) of the crossing provision focused on new entry rather than on existing operations and crossing arrangements, because of the concern that incumbent carriers might seek to block new construction to protect their franchises. But Congress indicated a concern not just that new construction not be blocked but also that the crossed carrier not prevent subsequent crossing operations. See House Report at 67, emphasis supplied (No railroad may refuse to let another cross its property, "provided that construction and operation do not materially interfere with the crossed railroad's operations). The purpose of line construction in general, and crossing rights in particular, would be thwarted if a carrier could be required to allow its competitor to construct a crossing but then – in a day, or week, or year later – block the other carrier from operating over the crossing track to serve shippers in interstate commerce. Thus, there is no reason why Congress would have given the agency the authority to require a carrier to allow another carrier to construct a crossing, but then deny the agency the authority to ensure that the carrier be able to operate over it at any subsequent time. Such a result would be particularly untenable in circumstances like those here, where continuing crossing operations by BNSF and its predecessors, and long standing shipper expectations flowing from those operations, have been a fixed presence in the Keokuk area for over a century.

The rationale expressed by the Board in BNSF is directly applicable to the crossing dispute between petitioners and CSXT. The only difference is that in this case the crossing carrier, after constructing its crossing, has denied the crossed carrier the ability to operate over its line thereby obstructing and frustrating M&W operations and long standing shipper expectations flowing from those operations which have been a fixed presence in the Defiance area for over a century.

D. Unique facts and circumstances presented in this case requires the Board to subject the Defiance crossing facilities to its Section 10901(d) jurisdiction and to afford Petitioners appropriate relief under 49 U.S.C. §10742.

CSXT's construction of the second crossing over the IHRC line in 1998 did not require authorization by the Board under Section 10901 because it was a project to "double track" an existing line that did not invade a new rail market. See City of Stafford, Texas v. Southern Pacific Transp. Co., Finance Docket No. 32395 1994 ICC Lexis 216 (November 8, 1994). Under this administrative precedent, CSXT did not seek Section 10901 authorization for this construction project and there was no regulatory oversight to insure that CSXT addressed the additional occupancy of M&W property and made appropriate arrangements with M&W for the maintenance and repair of the intersecting track facilities at this crossing. CSXT made no effort to obtain a new crossing agreement from M&W for the second crossing diamond on M&W property.

As discussed by Mr. Wendelin and Mr. Snyder, M&W must use the crossing diamonds to interchange traffic originating or terminating on the M&W line west of the diamonds with CSXT. The M&W/CSXT interchange track is located immediately adjacent to the diamonds in the northwest quadrant of the crossing. The crossing diamonds are therefore necessary facilities for the interchange of traffic between CSXT and M&W. The words "reasonable, proper, and equal facilities" for interchange of traffic in §10742 are comprehensive enough to include not only interchange tracks but terminal facilities extending a reasonable distance outside the terminal . . . Interstate Commerce Commission v. United States, 280 U.S. 52 (1929). By removing the diamonds, CSXT has denied those shippers located on M&W's line west of the diamonds the ability to interchange traffic with CSXT. By removing the diamonds, CSXT has also denied shippers east of the diamonds the ability to receive and forward traffic to and from NS on the western end of the M&W's line. By removing the diamonds and severing M&W's

main line track, CSXT had refused to provide reasonable, proper and equal facilities that are within its power to provide for the interchange of traffic and for the receiving, forwarding, and delivery of freight to and from its line and the line of M&W.

CSXT has tried to justify its removal of the crossing diamonds by contending that the M&W line west of the diamonds was not being utilized by M&W for rail service. This is wrong on three levels. First, Mr. Wendelin states that there are active shippers located on the M&W line just west of the diamonds (and before the embargoed sections of M&W track) that have been deprived of M&W rail service by removal of the diamonds. Second, M&W correspondence with CSXT in 2002 demonstrates that M&W requested CSXT to repair and maintain M&W's crossing diamond connecting tracks immediately adjacent to and between the two diamonds which was being forced out of alignment and out of gauge by CSXT operations over the diamonds. CSXT refused to repair the damage it caused to M&W's connecting tracks. And third, lack of use of M&W's line west of the diamonds does not terminate CSXT's common carrier obligation to maintain reasonable crossing facilities for interchange of traffic. 49 U.S.C. §10742; The Philips Co. – Petition for Declaratory Order, Finance Docket No. 32518 (ICC served April 18, 1995) (holding no abandonment of a line just because the line has not been used), aff'd sub nom. The Philips Co. v. Southern Pacific R. Corp., 902 F. Supp. 1310 (D. Colo. 1995), 97 F.3d 1375 (10th Cir. 1996); Minnesota Northern Railroad, Inc. v. Canadian National Railway Company, STB Docket No. 42080, March 18, 2005; (holding that a railroad's common carrier duties including those under §10742 are not extinguished simply because of non-use. Under certain circumstances, the Board can find that a carrier could be required to reinstall a switch that it has removed.); Norfolk Southern Railway Company – Petition for Declaratory Order – Interchange with Reading Blue Mountain & Northern Railroad Company, STB Docket No. 42078, April 29, 2003; (holding that the provisions of §10742 are compulsory. The parties

must continue to provide facilities for interchange to ensure that service to shippers continues. Neither party may prevent interchange from occurring.)

M&W is well aware that the Board prefers that parties privately negotiate their crossing and interchange arrangements. The record in this proceeding demonstrates that M&W has tried to do so on repeated occasions but that CSXT has not pursued these negotiations in good faith or with any degree of diligence. Furthermore, the requirement imposed by CSXT that M&W undertake the rehab of its line between Defiance and Cecil, Ohio to restore that line to FRA Class I status at a cost of millions of dollars before constructing its alternative crossing is precisely the kind of economic blockage condemned by the Board in Omaha and BNSF. It is irrefutable evidence that CSXT has no willingness to resolve this dispute.

For these reasons, it is necessary that the Board assert its regulatory jurisdiction *nunc pro tunc* over the initial construction and extension of the CSXT rail line across the M&W line in order to enforce the crossing protective provisions of 49 USC §10901(d). Burlington Northern & Santa Fe Railway Co – Petition for Declaration or Preservation of Crossing, Trackage or Joint Use Rights, STB Finance Docket No. 33740, and No. 33740 (Sub No. 1) (May 9, 2003). By asserting its §10901(d) jurisdiction, the Board can maintain the integrity of the national rail transportation network and enforce the provisions of 49 U.S.C. §10742. It can promote rail competition and preserve rail service on marginal lines Class I carriers can no longer efficiently serve. Finally, by granting relief to Petitioners, the Board can encourage rail executives to recognize their obligations to address differences with connecting railroads in an honest and timely fashion.

CONCLUSION

As noted by Mr. Wendelin, it is with reluctance and disappointment that Petitioners have found it necessary to present this matter to the STB. However, this proceeding presents extremely important issues and unusual circumstances. CSXT internal documents establish that

CSXT improperly obtained confidential financial information from Ohio Rail Development Commission on several occasions which CSXT used in formulating its response to requests by M&W that the crossing diamonds be repaired and replaced so that M&W could provide competitive rail transportation service to customers east and west of the diamonds. As a result of this disclosure, CSXT was aware of M&W's financial and maintenance problems when it decided to remove the diamonds rather than honor its July 2002 commitment to M&W and the Board's Office of Enforcement to repair and reconnect the diamonds. Resolution of disputes through consensual negotiations requires that the parties have confidence that they are being dealt with in a good faith and honest fashion. CSXT's refusal to honor its July 2002 commitment gave M&W reason to doubt that it was being dealt with in good faith by CSXT. CSXT's continuing delays, shifting positions, unreasonable conditions, and its ultimate refusal to restore the crossing diamonds confirm M&W's decision not to engage in consensual negotiations or mediation with CSXT. The documents produced by CSXT fully support that decision by M&W management.

M&W encourages the Board to thoroughly review the CSXT internal documents submitted in Petitioner's Document Appendix because they reveal a disturbing pattern of delay, evasion and misrepresentation by CSXT officials. The CSXT internal documents demonstrate that the principle objective of CSXT was to devise an alternative crossing proposal which would avoid Board enforcement of its July 2002 commitment to repair and reconnect the crossing diamonds. These efforts were intensified when CSXT became aware that M&W had received requests from the City of Defiance to provide rail service to the Defiance Industrial Park and then initiated condemnation proceedings to provide competitive rail service to the first industry to be located in that park. Mr. Davis, a principle CSXT witnesses in this proceeding, had extensive personal involvement with the Defiance Industrial Park. He was instrumental in promoting the alternative crossing proposal advanced by CSXT as a means of avoiding

reinstallation of the crossing diamonds as well as obstructing and delaying M&W rail service to the Defiance Industrial Park and to M&W shippers west of the Defiance crossing. Mr. Thoburn, the other principle CSXT witness in this proceeding, likewise had extensive personal involvement in the decision to remove the crossing diamonds and repeatedly resisted and delayed any attempt on the part of CSXT officials to consider honoring the commitment made by Attorney Humes in July 2002. The testimony of these two CSXT officials must be evaluated by the Board in the light of the role these individuals played in the ongoing efforts by CSXT to obstruct and competitively disadvantage M&W rail service at Defiance, Ohio.

In summary, the evidence of record fully substantiates that CSXT has engaged in a pattern of deceptive and anticompetitive conduct in refusing to promptly honor the commitments to repair and reconnect the crossing diamonds which it made to M&W and the Board in July 2002. It is equally clear that CSXT will not reinstall and maintain the crossing diamonds without an order from the Board directing it to do so. This conduct by CSXT is inconsistent with National Rail Transportation Policy, applicable statutory standards for the crossing by one railroad over the tracks and facilities of another and the provisions of §10742.

M&W seeks the restoration and maintenance of the crossing diamonds at CSXT's sole cost and expense in compliance with the commitments CSXT made to M&W and to the Board. M&W will be responsible for its own track on the east and west sides of the diamonds, but CSXT must be responsible for the repair and maintenance of deterioration and misalignment of M&W's track in the immediate vicinity and between the diamonds caused by or related to CSXT's high speed, high volume operations over the crossings. Finally, M&W believes that the record provides ample evidence of inappropriate conduct by CSXT officials in this matter which

requires the Board to send a strong and vigorous message to Respondent that such conduct will not be tolerated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard R. Wilson", written over a horizontal line.

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

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

VERIFIED STATEMENT OF SPENCER N. WENDELIN
(PUBLIC)

My name is Spencer N. Wendelin and I serve as the Chief Executive Officer of Maumee & Western Railroad Company ("M&W"). In addition, I am the Managing partner of RMW Ventures, LLC ("RMW"). I have held both positions for over nine years. My prior experience includes working for the Southern Pacific Transportation Company in various marketing, operational, accounting and real estate development capacities. I have also worked for the Pittsburgh & Lake Erie Railroad Company as a senior manager with responsibilities in marketing development and information management. I helped to start and manage marketing for Transkentucky Transportation Railroad, Inc. and Transkentucky Terminals, Inc. in 1979. In the early 1990's I was a founder and vice president of the Wheeling & Lake Erie Railroad Company. My own company, Transmark Associates, has helped other private parties start shortline and regional railroads in 18 states and two Canadian provinces. I have also performed work under subcontract for the World Bank on railroad projects in New Zealand and Argentina. In addition to executive management of M&W, I hold similar positions for two other shortline railroads, two warehousing companies, a heavy

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

VERIFIED STATEMENT OF SPENCER N. WENDELIN

My name is Spencer N. Wendelin and I serve as the Chief Executive Officer of Maumee & Western Railroad Company ('M&W'). In addition, I am the Managing partner of RMW Ventures, LLC ("RMW"). I have held both positions for over nine years. My prior experience includes working for the Southern Pacific Transportation Company in various marketing, operational, accounting and real estate development capacities. I have also worked for the Pittsburgh & Lake Erie Railroad Company as a senior manager with responsibilities in marketing development and information management. I helped to start and manage marketing for Transkentucky Transportation Railroad, Inc. and Transkentucky Terminals, Inc. in 1979. In the early 1990's I was a founder and vice president of the Wheeling & Lake Erie Railroad Company. My own company, Transmark Associates, has helped other private parties start shortline and regional railroads in 18 states and two Canadian provinces. I have also performed work under subcontract for the World Bank on railroad projects in New Zealand and Argentina. In addition to executive management of M&W, I hold similar positions for two other shortline railroads, two warehousing companies, a heavy

equipment maintenance company, a rail car equipment company and various other businesses. I hold an MBA degree with a major in transportation from Indiana University, as well as, BS and an Associate Degree in urban planning from the same university. I am also a graduate of the American Economic Development Council's Economic Development graduate level courses at Georgia Tech University and Oklahoma University.

As indicated in the initial petition filed with the Board by M&W and RMW, our dispute with CSXT regarding the removal of crossing diamonds at Defiance, Ohio has been a protracted and contentious matter. Moreover, the assertions and positions advanced by CSXT in its reply statement inaccurately mischaracterize the nature of this dispute and CSXT's actions in addressing this matter. In order for the Board to properly evaluate the relief requested by M&W and RMW, it is first necessary to provide certain background information regarding the M&W line at Defiance, Ohio.

A. BACKGROUND INFORMATION

The M&W line in Defiance, Ohio was originally acquired and constructed in 1853 by the Toledo and Illinois Railroad Company a predecessor in interest to the Wabash Railway Company which by merger became part of the Norfolk and Western Railway, now Norfolk Southern. The parcel of ground which comprises the M&W/RMW right of way at the location of the Defiance crossing was acquired initially by the Toledo and Illinois Railroad Company in fee simple from William and Katherine Taylor on August 24, 1853. The size of the parcel is approximately 1.6 acres. The right of way now operated by CSXT which abuts the M&W right of way was not acquired by the Buffalo, Pittsburgh and Chicago Railroad (chartered by B&O) until 1873. The rail

line was built in 1874. Thus, CSXT is the crossing railroad and M&W/RMW is the crossed railroad. The former B&O mainline was a double tracked line but crossed the M&W track on a single track until CSXT installed the second diamond in 2000.

The original right of way of the Toledo and Illinois Railroad Company generally parallels the Maumee River which flows in a northeasterly direction into Lake Erie at Toledo, Ohio. The Maumee River flows through what once was the Great Black Swamp which covered an area of approximately 40 miles by 120 miles southwest of present day Toledo. This swamp substantially delayed development in northwestern Ohio until the 1840s with the coming of the Wabash and Erie Canal and the beginning of the draining of this area and deforestation in order to provide for agriculture. Even in the 1870s when the Baltimore, Pittsburgh, and Chicago Railroad sent survey crews to stake out its line of railroad, reports indicate that the country was heavily timbered for 40 miles and covered with water a foot deep. In some locations, the survey indicated that a pole could be driven into the soft black soil for more than 20 feet. More recent soil testing by M&W verifies that bedrock in this area lies 40+/- feet below ground level. Even when drained, maintaining a solid railroad bed in these soil conditions has always been a problem and track stability has been a constant challenge for all railroads operating in this area of Ohio.

When M&W/RMW acquired this line from Indiana Hi-Rail and Norfolk Southern in the Hi Rail bankruptcy proceeding in 1997, the track and right of way had not been properly maintained for many years. Accordingly, M&W operates on FRA excepted track and our operations are subject to unstable track which requires constant attention, reballasting and drainage maintenance. As a short line carrier, M&W can only invest

those funds in track maintenance which it can derive from its freight revenues or obtain from governmental sources. In light of the deferred maintenance to which this line was subject, our efforts to preserve and promote rail service to our shippers requires M&W to operate on excepted track which is not what we would prefer. Nonetheless, M&W has steadily worked to maintain its line and increase its traffic levels. Since 2001 M&W business has increased 18.5% despite CSXT's removal of the diamonds.

On December 12, 2001, vandals entered M&W's right of way at or near M.P. 64 and set fire the M&W bridge at M.P. 64.49, causing major damage to the bridge and track structure on the bridge. M&W immediately began the engineering analysis of the damage and commenced planning for reconstruction of the bridge. At the time of this fire, most of the traffic which had, and would have continued to, traverse the CSXT crossings over M&W at Defiance, Ohio was traffic received, for M&W purposes, at the NS interchange at Woodburn, Indiana west of M.P. 64 which moved to customers east of Defiance, Ohio. Other businesses, such as volume grain movements, originated at points on the M&W east of Defiance, and traversed the crossing diamonds on route to the NS interchange at Woodburn, Indiana. Since damage to the bridge physically but temporarily eliminated movement of this traffic over the line to or from its preferred interchange at Woodburn, Indiana, M&W embargoed the line at Cecil, Ohio. In the 12 months preceding this arson fire, 1834 M&W car loads and a like amount of empty cars traversed the Defiance crossing moving to or from the Woodburn interchange. That volume represented nearly 58% of all M&W's carload traffic volume at that time.

To enable its customers to continue to receive service and in order to cause the least amount of disruption in that service, M&W approached NS and CSXT to cooperate

in a rerouting of traffic via a CSXT-NS connection usually at Toledo or Findlay, Ohio thence to or from M&W at its Defiance, Ohio interchange with CSXT. It should be pointed out that M&W paid CSXT the going industry rate for performing such reroute service for M&W and its customers.

The basis for the dispute over the diamonds with CSXT began in 2000 when, without the consent of RMW or M&W, CSXT constructed a second main line track and diamond at the Defiance crossing as part of its Conrail acquisition plans. Initially, based on my own personal observation in 2000-2001, CSXT operated directionally with the eastern track carrying predominately eastbound traffic and the westbound track carrying predominately westbound traffic. Over a period of time, CSXT operations have been altered but its directional operations and the large volume of high speed trains handled by CSXT over these diamonds resulted in track creep and track instability which caused the two CSXT diamonds to shift and go out of alignment and out of gauge.

Historically, when the B&O constructed its crossing over the Wabash Railroad in the early 1870s the two railroads did not memorialize any arrangements in writing. The first written agreement regarding this crossing was between the B&O and Wabash Railroad on July 25, 1928 and consists of correspondence constituting an agreement governing the participation by those two carriers in the expense of operation and maintenance of the signal interlocking plant. This was supplemented in 1929 with an agreement covering ownership, operation and maintenance of the tower and target at the crossing. In 1936 a further agreement terminated the 1929 agreement and provided for the installation, operation and maintenance of a locally controlled interlocking plant. Finally, the agreement to which M&W succeeded with CSXT was entered into on

October 22, 1979 and covered the remote control B&O-N&W joint facility signal interlocking at the crossing.

There has never been a written agreement between the railroads regarding the use of the M&W right of way at this crossing nor has there ever been a written agreement specifying track maintenance responsibilities other than the long recognized industry practice that the crossing carrier maintains the crossing facilities over the crossed carrier a practice which both carriers at this location have adhered to for more than 100 years. The 1979 interlocking agreement controlled only those signals and interlocking facilities at the crossing and specified a methodology for allocations and assignment of costs for interlocking facilities. During the course of our dispute with CSXT, on December 5, 2002, M&W cancelled that agreement effective December 5, 2003 after CSXT removed the diamonds.

B. CSXT ANTICOMPETITIVE CONDUCT

CSXT has reversed and misrepresented its position on the restoration of the Defiance diamonds and has refused restoration of the diamonds to preclude M&W competitive rail service to the Defiance Industrial Park and to impede efficient operation of the M&W line west of the diamonds. In our petition for declaration or revocation of CSX Transportation, Inc.'s crossing rights at Defiance, Ohio filed with the Board on July 12, 2004, we outlined the initial phases of the dispute between CSXT and M&W railroad regarding the Defiance crossing and the failure of CSXT to replace the crossing diamonds as it represented to the STB through counsel that it would do. Our petition also indicates that on June 30, 2004 M&W learned that CSXT and the City of Defiance had arranged for CSXT to provide rail access to the Defiance Industrial Park because the

city's preferred access from the M&W line was prevented by CSXT's removal of the diamonds. However, with the discovery documents produced by CSXT in this proceeding, it is now possible to establish in considerable detail CSXT's motives and conduct in the Defiance diamond removal matter and why it has steadfastly refused to reinstall the diamonds at this crossing.

On December 11, 2001, an internal memorandum from Ms. Ratliff to Mr. Booth and Mr. Collier of CSXT indicates that CSXT obtained confidential financial and operational information regarding M&W track conditions from Mr. Lou Jannazo of the Ohio Rail Development Commission. M&W had been required to report this information to Ohio Rail Development Commission as part of its application for state financial assistance with the maintenance and rehabilitation of the M&W line.¹ In early 2002, CSXT worked with M&W to reroute traffic due to the destroyed bridge at Cecil. M&W completed the engineering and field repairs to the arsoned bridge, utilizing outside contractors in the spring of 2002. Upon preparation to reopen use of its line east of M.P. 64 (Cecil, OH) and to and via the crossing diamonds where CSXT crossed M&W's main line at Defiance, Ohio, we found that CSXT had allowed these crossing diamonds to fall into disrepair and in fact had disconnected the two diamonds, apparently because of track creep in opposite directions caused by CSXT's predominate pattern of operations through this area forcing each diamond in the opposite direction from the other diamond.

During the Spring of 2002, M&W operations personnel contacted CSXT personnel, on multiple occasions requesting that CSXT immediately make the needed repairs to the diamonds and correct their misalignments. CSXT's response was not to

¹ Solicitation of this information from an Ohio state official may well implicate CSXT in the violation of statutory fiduciary duties which Mr. Jannazo owed to M&W in connection with financial information which M&W provided to ORDC.

perform the needed repairs, and to instead remove the crossing diamonds. Subsequently, despite statements by CSXT counsel to both MAW and the STB that the reason for the removal was to accomplish needed repairs, prior to re-installation of the crossing diamonds, CSXT did not do so. CSXT has subsequently ignored its commitment and has refused to place MAW's mainline back in service by installation of the crossing diamonds. In the interim, M&W has been forced by CSXT's refusal to reinstall the diamonds, to advise M&W customers to reroute their traffic, which formerly traversed the Defiance crossings for interchange to NS at Woodburn, Indiana, to a route via CSXT-Defiance-M&W. Other traffic, consisting of several hundred carloads per year has been lost to MAW due to CSXT's actions and inaction.

In 2002, discussions initiated by CSXT at its annual shortline meeting took place between M&W and CSXT regarding possible assistance from CSXT in connection with M&W plans to upgrade its track conditions in order to sustain and promote rail traffic with CSXT. In May 2002, CSXT advised M&W that there could be no assistance for track maintenance and that it would no longer work with M&W on the reroute of traffic. On June 4, 2002, Mr. Booth wrote to me and indicated that CSXT intended to remove the Defiance diamonds. On June 12, 2000, CSXT short line administrator Mr. Demeline wrote to the CSXT manager of joint facilities contracts, Ms. Collier and stated that I was "complicating" the CSXT crossing removal and that ORDC, again in confidence, had provided information to CSXT that there would be no state financial assistance to M&W and that it would take \$7 million to upgrade the M&W line to FRA Class I status. Shortly thereafter on June 18, 2002, Mr. Booth with copies to Collier, Demeline and Thoburn wrote me and indicated that CSXT would "temporarily" remove the diamonds

and replace them when the shippers on our line were in need of rail service. CSXT disconnected the diamonds severing M&W's tracks on July 2, 2002.

In July 2002, M&W objected to the diamond disconnection and notified the STB of its concern that CSXT was using the crossing diamond disconnection in an effort to deprive M&W from effective competitive access to the Defiance Industrial Park which could be served by both CSXT and M&W. On July 19, 2002, Attorney Humes of CSXT notified the Board that CSXT would repair and reconnect the crossing diamonds and in September 2002 CSXT again agreed to reroute M&W traffic on a case by case basis. Then, on November 11, 2002, CSXT Vice-President of Engineering Bell wrote to Mr. Thoburn and directed him to remove the diamonds and that the diamonds would not be replaced until and unless M&W assumed its part of the diamond repair work. This engineering decision appears to have been made without any consultation with Attorney Humes or any coordination with other offices within CSXT. Significantly, on November 20, 2002, internal correspondence between the joint facilities group and the signal superintendent regarding the Defiance interlocking discusses who will pay for the signal and crossing removal work. On November 25, 2002, Mr. Dwight Dalton, roadmaster for CSXT was told by Mr. Thoburn to remove the diamonds and on November 25, 2002 the new Vice President of Engineering Schmidt communicated with Mr. Thoburn and confirmed the directive to remove the diamonds. These internal documents show clearly that the diamonds were removed at explicit instruction of senior CSXT engineering officials.

On December 5, 2002, I wrote to CSXT President Mike Ward protesting the removal of the diamonds and gave notice of the cancellation of the interlocking

agreement at the Defiance crossing. Subsequent internal e-mails among the CSXT staff indicate their irritation that I had brought this matter to the attention to Mr. Ward and on December 23, Mr. Schmidt wrote to me and indicated that CSXT had removed the diamonds for safety reasons. As indicated by the internal CSXT documents now available through discovery, this justification was clearly only a face saving fabrication. CSXT engineers were primarily concerned with avoiding the cost of maintaining the diamonds which under past practice CSXT was responsible for and had assumed.

As the dispute continued into 2003, CSXT again continued its clandestine communications with the Ohio Rail Development Commission obtaining confidential information from Mr. Jannazo regarding the balloon payment to ORDC on M&W's acquisition debt, which became due in April 2003. In the meantime, M&W worked diligently to refinance its debt and payoff its loan obligations to the ORDC which occurred in March, 2003. On March 14, 2003, CSXT signal administrator Richie wrote to Ms. Collier indicating he had a \$17,000 bill for the interlocking which had not been paid and inquired what should be done with this bill. Collier wrote back with copies to Attorneys Shutz, and Humes and Mr. Booth indicating that given the dispute between CSXT and M&W it would not be appropriate to rub "salt in the wounds" and that M&W was in financial trouble and should not be billed for this amount particularly in view of the fact that the diamonds had been torn out over M&W objections. Attorney Humes wrote to Ms. Collier indicating his concurrence in that approach. In June 2003, Mr. Webb wrote to Mr. Richie indicating that under the interlocking agreement between CSXT and M&W predecessors, various expenses related to the interlocking were not billable to M&W.

In December 2003, efforts were again initiated between M&W and CSXT to resolve the diamond removal issue by establishing alternative interchange arrangements. Despite a meeting in December 2003 between myself, M&W's counsel, and Mr. Schmidt, as we entered 2004 little progress was made and in January and February 2004 the CSXT engineering staff let this matter languish. The reason is clear from the February 11, 2004 communication between Mr. Demler and Ms. Collier in which Mr. Thoburn, the CSXT local engineering official, expressed his concern about the \$250,000 cost of an alternative interchange arrangement with M&W. In view of these costs, CSXT engineering officials responded to M&W inquiries with further inaction advising other CSXT officials that they should not install the M&W crossing until and unless there was shipper demand for rail service on the M&W line.

Then, in May 2004, CSXT became aware of a potential plastics customer which was to be located at the Defiance Industrial Park. The Defiance Development Administrator, Jerry Hayes wrote to M&W marketing representative Phil Randall regarding this opportunity and provided copies of his correspondence to Mr. Davis, the CSXT industrial development official from Ohio. Additionally, city development officials provided CSXT with information regarding an ORDC grant request to assess rail service to the Defiance Industrial Park. On May 21 and 22, 2004, there is an exchange of email with Mr. Davis, the CSXT industrial development administrator for Ohio, providing information regarding the ORDC request for proposal with respect to M&W's service to the Defiance Industrial Park. On May 23, 2004, Mr. Davis emailed Charles McSwain with copies to Kellerman, Thoburn, Booth, Schaffer, and other CSXT officials regarding a request from Mr. Hayes to reinstall the two railroad crossing diamonds in

order for M&W to serve the industrial park and attract the new plastics company. In his email, Davis acknowledges that CSXT stated in writing that its removal of the diamonds was temporary and that CSXT would reinstall them, at CSXT expense, provided there was a demand for rail service and M&W fixed its main line track. Davis next outlines the various alternatives which CSXT could use to avoid reinstalling the crossing diamonds. Mr. Davis advises the CSXT staff that the project is moving rapidly and that this is "almost a no win scenario for us." And again, the issue is raised among the various CSXT officials regarding which CSXT department would be willing to contribute capital to assist in avoiding replacement of the diamonds. Questions are also posed to CSXT officials as to whether or not they can confirm that operating costs will be higher for CSXT if the diamonds are reinstalled versus CSXT providing direct service. Mr. Davis concludes, "if we don't come up with something, then the community/M&W will try to hold us to the July 12 letter where we stated the removal was temporary and we could reinstall within two to three weeks if M&W met the two conditions." During the last week in May, 2004 the CSXT staff continued their efforts to come up with proposals that would guarantee CSXT access to the new Defiance Industrial Park while frustrating M&W's access to that facility. On May 26, 2004, Mr. Davis wrote to Jerry Hayes of the Defiance County Economic Development Office and indicated that CSXT would agree to install a main line turnout and coordinate with the County's construction of a side track into the industrial park "provided that [REDACTED] [REDACTED]." Induced by this proposal, Stanbridge elected to construct its plant in the Defiance Industrial Park and to work with CSXT in the construction of the siding into the park.

CSXT documents during June 2004 continue to reflect CSXT internal efforts to avoid replacement of the diamonds, how to construct an alternative interchange arrangement with M&W which would cost less and which CSXT department would be responsible for the cost of that work. On June 3, 2004, John Booth wrote to Paul Hitchcock and Attorney John Humes with copies to various CSXT officials regarding the fabrication and installation costs for two diamonds. He went on to discuss various requirements of an alternative turnout which would limit M&W to one daily crossing movement which would be restricted to an operating window acceptable to CSXT.

CSXT also considered "[REDACTED]

[REDACTED] For the balance of June 2004 the CSXT staff continued to debate the merits of an alternative crossing arrangement. On June 30, 2004, I again wrote to Mr. Ward regarding the lack of any substantive progress on the part of CSXT's staff to M&W's request for the reinstallation of the diamonds.

In early July, 2004 M&W instituted condemnation proceedings to acquire its own right of way into the Defiance Industrial Park from its line west of the Defiance crossing in order to access the Stanbridge color plant site. I understand this action on our part is the subject of several highly confidential exchanges of correspondence to which I have not had access, but will be addressed directly by M&W legal counsel in our legal arguments. The next correspondence which I have been able to review is the July 9, 2004 letter from Mr. Davis to Jerry Hayes which apparently was issued in light of M&W's condemnation proceeding. In this letter, Mr. Davis advises Mr. Hayes that while CSXT is willing to extend its offer to construct a siding and serve the industrial park as set forth in his correspondence of May 28 through July 28, 2004, he now understands that it might

be possible for M&W to serve the industrial park in the future and accordingly, CSXT was withdrawing its condition that it receive or deliver 100% of the rail shipments from the industrial park.

On July 13, 2004, Mr. Len Kellerman, CSXT Director of the Rail Network Marketing conclusively rejected our request that CSXT honor its prior commitments by reinstalling the crossing diamonds and instead indicated that CSXT would provide an alternative means of access once M&W repaired its track and lifted its embargo. It should be noted that no M&W embargo existed at that time. As the documents produced by CSXT clearly indicate, the representations set forth in the July 13, 2004 letter from Mr. Kellerman are blatantly untrue. In his letter, Mr. Kellerman states: "the crossing diamond matter and the industrial park access matter are truly unrelated" despite the fact that for the last six months the CSXT internal emails and memoranda clearly demonstrate that the CSXT staff was acutely aware of the competitive traffic potential at the Defiance Industrial Park and sought to come up with a position which would preclude the necessity of reinstalling the crossing diamonds and thereby inhibit M&W access to the industrial park. In response to Mr. Kellerman's condescending and patronizing letter, I wrote to him on July 23, 2004. That letter indicates my irritation and frustration with the CSXT misrepresentations and with the delays and refusal of CSXT to restore the diamonds.

In response to this letter, it appears that Mr. Booth, sensing our increased willingness to initiate a formal proceeding at the STB, proposed that CSXT try to mediate the dispute with the Office of Enforcement at the Board. Once more, throughout August and September 2004, the CSXT internal memoranda indicate the inability of CSXT to come to any firm conclusions regarding the various alternative cost scenarios for

installing the diamonds or building turnouts to provide an alternative crossing arrangement over CSXT. Finally, on September 10 and 13 emails from Mr. Chandler to Mr. Harris indicate the turnout's cost would be approximately \$250,000 whereas the cost of replacing the diamonds would be approximately \$200,000 with a useful life of three years.

While I am not a track engineer, I have over 30 years of experience in the railroad industry and I must confess that the level of cost analysis demonstrated by the CSXT internal documents, to my view, is superficial and result driven. It is very evident that the CSXT engineering staff did not want to incur the cost of maintaining the Defiance diamond crossings, nor did CSXT operating officials wish to slow their trains through the Defiance diamonds and these considerations drove the cost estimates which they provided to other CSXT officials in evaluating options and alternatives. Moreover, the testimony of Mr. Will Snyder, our track engineer expert, addresses these issues in greater detail. He notes that the alternative crossing arrangements proposed by CSXT are not adequate from either an engineering or an operational standpoint to enable M&W to safely and efficiently cross the CSXT main lines at Defiance, Ohio.

Finally, the Board should note that the most recent internal CSXT documents from 2005 indicate a clear recognition on the part of CSXT that rail service to the Defiance Industrial Park was not limited only to the Stanbridge Plant but also presented the potential for service to additional shippers which might locate in the park.

As I prepared this Verified Statement, and reviewed the documentation submitted by CSXT to the Board as compared to the documents produced by CSXT in response to M&W's discovery request, it is immediately apparent to me that CSXT has selectively

omitted numerous documents which indicate the reasons why CSXT has refused to restore the diamonds. It also became apparent to me that a selective incorporation of CSXT documents as exhibits to my verified statement would not adequately convey to the Board the internal confusion, opposition and bureaucratic foot dragging with which CSXT addressed the removal of the Defiance diamonds. Accordingly, I have provided the Board with a complete set of the pertinent CSXT documents pertaining to this matter from 2002 to 2005, so the Board can evaluate for itself these inconsistencies, misrepresentations, and lack of good faith which has been repeatedly demonstrated by CSXT officials in this matter. Based on these documents, it is indisputable that efforts on the part of M&W to settle this matter or to submit it to mediation were not met with honorable and good faith efforts on the part of CSXT officials to address these issues in an honest and business like fashion. Instead, we have been met with equivocation, delays, shifting positions, self serving representations and outright misrepresentations of fact. Accordingly, in these circumstances, the only viable alternative for addressing the actions taken by CSXT is to present this matter for Board determination.

I must also express my disappointment with CSXT's efforts to use this proceeding to further its efforts to evade and obstruct M&W's efforts to restore the use of its own rail line. CSXT's representations to the Board that its proposed alternative crossing scheme provides an acceptable resolution of this dispute is undercut by the conditions CSXT attaches to that proposal. It is particularly disturbing that a Class I railroad assumes that it can tear out crossing diamonds severing the main line of a Class III carrier, and then dictate to the Class III carrier as to where and under what conditions it will permit our railroad to regain the use of our rail line!

C. INJURY TO MAUMEE & WESTERN

I also wish to address how M&W has been competitively and financially disadvantaged by CSXT's removal of the Defiance diamonds. M&W has managed to maintain minimal rail service both east and west of the Defiance crossing despite the removal of the diamonds. However, the Board should realize that as a result of the removal of the Defiance crossing, CSXT has deprived shippers east of the crossing of access to efficient connecting rail service provided by Norfolk Southern by way of interchange with M&W at Woodburn, Indiana. M&W is a handling line carrier for Norfolk Southern and stations on M&W are also shown as NS stations in the National Open and Prepay tariff publication. Similarly, for M&W stations west of the Defiance crossing, M&W provides switching service on behalf of CSXT and the removal of the diamond crossings precludes the ability of M&W to switch stations west of the crossing point for CSXT line haul movements. The shipper letters attached to my statement as Exhibit A attest to the anticompetitive impact of CSXT's actions. As a result of the removal of the diamonds, it has been necessary for M&W to station an engine and related equipment on the western end of M&W which required duplicative operations and added costs which impact on the quality of service which M&W can provide to its shippers.

Moreover, in November 1999 M&W was contacted by the Defiance Community Improvement Corporation to help with a planned expansion of the Omni-Source Scrap Company at Defiance, Ohio. (See Exhibit B) Projected additional volume for this traffic was 5,000 tons per month. The company is located just west of the diamond crossings at Defiance and is served by CSXT but also sought service from M&W as well. As a result of the removal of the crossing, M&W estimates that it has lost

potential freight revenues of \$187,000 per year over the last four years. In addition, since CSXT has removed the diamonds at Defiance, M&W has lost \$41,000 + dollars in annual revenues from movements out of Detroit via CSXT to a customer west of the Defiance diamond. While it would have been necessary to complete the rehab of our line west of the diamond to handle this business, without the diamonds such rehab was not possible because we could not generate the revenues which would have been utilized to rehabilitate our track. CSXT cites M&W track conditions and lack of traffic as justification for refusing to reinstall the diamond, but refuses to recognize that its removal of the diamonds makes it very difficult for M&W to develop attractive rail service proposals which can generate funds for rehabbing and maintaining our track.

The removal of diamonds has also diverted traffic for the Campbell's Soup plant located at Napoleon, Ohio, which used to be transported via NS interchange at Woodburn, Indiana via M&W to points on M&W's line east of Defiance. As presently routed, CSXT pays M&W less for this traffic than NS and M&W has lost an average of \$117,400 per year in revenue in just the last two years on this traffic.

M&W also has handled traffic to and from the GM Central Foundry located at Defiance, Ohio. This facility is served by CSXT, but is open under reciprocal switching to the M&W. In 2002, the GM Central Foundry began receiving aluminum in substantial volumes from a new foundry completed in 2002 near the west end of the M&W. This volume is being trucked because with the diamonds removed at Defiance, M&W can not move this traffic by rail nor raise the funds to improve its line to handle this business safely. Though the volume of this move is not known for certain, it is estimated to be at

least 5,000 tons per month and will grow in the future. Maumee & Western anticipates that the potential losses of this business to be more than \$317,000 per year.

In 1998, M&W attempted to work with CSXT to obtain 50,000 tons per year of process heat coal business going to the Campbell's Soup plant at Napoleon, Ohio. CSXT was unable to develop a competitive rate with M&W and Campbell continued to receive its coal via truck. The CSXT rate was nearly 20% higher than a competitive rate offered by NS for the same general area. However, without the crossings at Defiance, M&W and NS cannot handle this traffic to Campbells Soup. Maumee & Western estimates a potential loss of \$117,000 per year in connection with this traffic. Additionally, M&W has been approached by American Maintenance and Training to store locomotives on underutilized tracks west of the diamonds in 2003. AM&T was to arrange with DJ Joseph Transportation for long term storage contracts. However, since M&W could not access its tracks west of the diamonds, this transaction could not be consummated. M&W lost storage revenue of approximately \$10,000 + per year.

As noted above, CSXT has attempted to block M&W from serving new customers in the Defiance West Industrial Park. Stanbridge Color will handle plastic commodities with an initial volume of 200 car loads per year which may increase to double that volume in subsequent years. M&W estimates that its potential revenue losses would be \$86,000 per year. CSXT told both this customer and city and county officials that M&W cannot service the customer specifically because CSXT has removed the crossing diamonds severing M&W's main line and its access to this proposed development park with an area of over 700 acres.

In addition a major ethanol production company with existing operations in northern Indiana has expressed interest to M&W regarding service to a plant which it intends to build to produce ethanol to be located in northwest Ohio. One of the primary sites under consideration for this plant is the same industrial park on the west side (now cutoff by CSXT's removal of the crossing diamond) of the crossing at Defiance.

On July 1, 2004, RMW and M&W filed in the Court of Common Pleas for Defiance County, Ohio a petition to appropriate various parcels of real property within the industrial park to permit the construction of a branch line from the M&W main line west of the Defiance Crossing into the industrial park. CSXT and RMW's main line track are respectively situated to the north and south of the industrial park. To provide railroad service to prospective park tenants, RMW intends to construct and pay for a railroad spur from its main line to Quality Drive, but was unsuccessful in its attempt to negotiate the procurement of an easement over and across various properties within the park. The Defiance County Court dismissed the RMW condemnation petitions on a misapplication of Ohio law but this decision has been reversed and remanded by the Third District Court of Appeals, Defiance County, Ohio. Maumee & Western's plan to construct a spur track into the Defiance Industrial Park and its decision to pursue condemnation proceedings to acquire the requisite right of way into the park fully demonstrates the intent on the part of M&W and RMW to provide common carrier rail service west of the Defiance diamonds and the need of M&W and RMW to have functional diamond crossings at this location.

The purpose of the foregoing summary is to demonstrate that the dispute between M&W and CSXT is not merely an operational disagreement between two railroads. It

has extremely important and financially significant impacts on the ability of M&W to provide common carrier rail service to shippers on its lines. Removal of the crossings has had a devastating impact on the ability on M&W to conduct common carrier rail operations and to generate rail freight revenues which are necessary to repair and rehabilitate its rail line to improve rail service to its customers and to offer competitive rail service to that now being provided, in many cases, by CSXT.

This is not to say that each one of the prospective business opportunities described above would have materialized and generated the specific dollar amounts of freight revenue projected. It is, however, to indicate to the Board that there are continuing freight service opportunities from which M&W is being precluded by the CSXT action in removing and refusing to reinstall the Defiance crossing diamonds. The CSXT action is having a very detrimental effect on M&W freight revenues and its ability to maintain and operate rail service over its line both to service existing customers and those who are prospective users of M&W's common carrier service. Accordingly, M&W requests that the Board give this matter prompt and expedited consideration.

D. REBUTTAL TO CSXT WITNESSES

The verified statements submitted by CSXT in this proceeding are inaccurate and misleading. Errors and misstatements offered by Mr. Thoburn include the following:

1. Mr. Thoburn states that the 1979 agreement between predecessor companies Norfolk & Western (M&W) and Baltimore & Ohio (CSXT) allowed for CSXT to construct a second crossing diamond at Defiance over the land of RMW and the right-of-way and tracks of M&W. The agreement upon which Mr. Thoburn seem to rely was not and was never intended to be an agreement covering CSXT's rights to cross

M&W/RMW property, tracks and right-of-way. This agreement covered the signaling system then associated with the crossing at Defiance. Article 3c of that agreement reads as follows: "Each of the parties hereto shall, at its sole cost and expense, construct or modify all signaling (emphasis added) 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." Article 4 of that same agreement refers to track work necessary to accommodate what was then a new "...remotely controlled interlocking..." To assume that this wording contemplates the installation of a second crossing diamond by either party at that location is ridiculous. The track changes referred to were such things as installing insulated rail joints and other signaling devices in the tracks, not building an entirely new track and certainly not adding crossing diamonds at that point. Finally, the language of that 1979 agreement makes very clear that it dealt only with the need to replace previous interlocking agreements between the parties covering signaling and train operations through the interlocking plant at Defiance, Ohio, Mr. Thoburn's attempt to characterize that agreement as a crossing agreement regarding installation of a second crossing diamond is a disingenuous attempt to misconstrue this document.

2. Mr. Thoburn also complains that re-installing the diamonds requires much advance planning and cost. Even assuming his estimates are correct, which is subject to considerable doubt, the CSXT has had three years to do such advance planning and purchase the needed replacement diamonds. If, CSXT had been truthful in its original statements to the STB regarding its plan to repair and re-install the same, then all such planning and most of the cost would now be in the past. As it is, CSXT's poorly conceived attempt to benefit from the crossing diamond removal and mislead the STB, is

not and can not be considered an excuse for CSXT not reinstalling the diamonds and then ordering new diamonds if CSXT wishes to replace the older repaired diamonds. Such action would allow return of M&W's mainline to service in short order, probably a month or less. In any case, the cost to CSXT to fulfill its responsibility to maintain the crossing as the crossing railroad, is not a valid reason for not performing that duty. The STB should reject such spurious "logic".

3. Mr. Thoburn states that: "By mid-year 2002, ...M&W had not moved a single car over the diamonds in 18 months." This is not true. First, the last cars to traverse the diamond crossing occurred just before the arson fire in December of 2001. Apparently, Mr. Thoburn neglected to check the dispatcher sheets of his own railroad before making such statements. Had he done so, he would have found that M&W operated freight revenue trains over the crossings and lines until December of 2001. As previously explained, M&W's operations over that portion of the line west of the Defiance crossing temporarily ended in December, 2001, due to an arson fire eliminating the possibility for through traffic to flow over the line to and from the M&W-NS interchange at Woodburn, Indiana. The necessary bridge repairs did temporarily eliminate M&W's ability to utilize its line from December of 2001 through mid-April of 2002. M&W's attempt to re-institute its through service between the M&W-NS interchange and points east of Defiance after the necessary bridge repairs were accomplished were blocked by CSXT's failure to maintain the crossing diamonds and the disconnection of the track between the two diamonds by CSXT. Attempts by M&W to get CSXT to effect the necessary repairs were ignored or delayed repeatedly, until CSXT decided that M&W's "non-use" of the crossing diamonds justified their disconnection

and removal. In other words, to be absolutely clear, M&W's "non-use" of the crossing diamonds was caused first by a bridge arson fire and when M&W had accomplished repair of that structure, M&W's use of the crossing diamonds was subsequently blocked by CSXT's own failure to maintain them. Mr. Thoburn's remarks demonstrate a complete lack of candor with respect to these facts.

4. Mr. Thoburn states that CSXT saw an opportunity to reap substantial savings by removing the crossing diamonds, never mind that CSXT's own acts and omissions were responsible for creating that "opportunity". This is perhaps the one accurate statement by Mr. Thoburn. Clearly, CSXT was intent on eliminating M&W's main line, irrespective of the damage to M&W or its customers.

5. Mr. Thoburn "offers" CSXT's alternative to "allow" M&W to move traffic between both parts of its now severed main line. However, the proposal is clearly unworkable from an operational standpoint. Note the following major flaws in the CSXT proposal:

a) CSXT proposes that the existing interchange track between CSXT and M&W be utilized as part of the "through" movement line for M&W. This interchange track is often blocked by cars which M&W has interchanged to CSXT, but which CSXT has not pickup with its local service. Such cars sometimes sit on the interchange track for two to three days before CSXT picks them up. Thus, the only way M&W could move through the set of switches and perform the forward and backward movements which CSXT's proposal would require, would be to place those interchanged cars on CSXT's main track(s) during such movement, blocking CSXT's use of its main line tracks and causing

M&W the expense of a second train crew to pull the cars back onto the interchange track after its first crew had traversed the crossing. All of this, of course, begs the issue that once M&W has interchanged the cars to CSXT and they are sitting on the interchange track, M&W has no movement authority for those cars and moving them as described above would subject M&W to possible violations of FRA safety standards. In earlier discussions with CSXT regarding its "proposed alternative", M&W repeatedly pointed out this problem, which CSXT has steadfastly refused to acknowledge or address.

b) CSXT's proposal contains other operational problems which are not addressed. For example, for M&W to move even a 50 car unit grain train, CSXT would have to provide M&W use of both of its main lines at Defiance for more than a mile in each direction from the location of the present crossing, thus completely eliminating CSXT's use of both its mainlines for the up to an hour. It is extremely unlikely that CSXT would be able to provide M&W with such an operational "window" of time over its main lines. Of course, this does not even consider the issue of whether it would be desirable for M&W to be shoving mile long trains through crossovers on the CSXT main line. CSXT must certainly know that its "alternative" is physically and operational unworkable. It is for that reason that CSXT conditioned this proposal on M&W restoring its line west of Defiance to FRA Class I status before CSXT will build the connecting track. CSXT's sole purpose in proposing these alternatives is to continue to hold M&W operationally incapable of properly performing its common carrier duty to

M&W's customers, while CSXT continues to reap substantial benefits in its own operations and revenues from the "forced" re-routing of M&W traffic;

c) CSXT's alternative would require even more of RMW's property and M&W's right-of-way. I note that neither Mr. Thoburn's, nor any other CSXT official addressed any compensation to either M&W or RMW for volunteering more of their property for this alternative crossing plan.

6. Mr. Thoburn's verified statement provides extensive detail of rerouted traffic, which CSXT in conjunctions with NS performed for M&W. It is not clear what the 185 pages of detour information in Mr. Thoburn's statement was intended to demonstrate. However, what it does make clear, is that M&W had substantial continuing traffic which needed to flow over the now removed crossing diamonds at Defiance on its way to or from the M&W-NS interchange at Woodburn, Indiana. This is traffic which M&W was forced to re-route, first by the arson fire and later by CSXT's failure to maintain the crossing diamonds at Defiance, Ohio. However, if Mr. Thoburn was attempting to utilize the fact that M&W had from time to time (prior to the fire and CSXT's lack of crossing maintenance) detoured certain traffic over a combined NS-CSXT route, as an indication that M&W had closed its line between Cecil and Defiance, allow me to clearly state that the truth is just the opposite. Attached at Exhibit C are copies of M&W train crew time sheets randomly selected from various months in 2001. These crew time sheets (all of which were supplied along with many others to CSXT prior to Mr. Thoburn's submittal of his verified statement), clearly show that M&W continued to move trains and revenue traffic over the CSXT crossing at Defiance. Such traffic moved to and from both customers west of Defiance and to and from M&W's

interchange with NS at Woodburn, Indiana. Mr. Thoburn could have easily confirmed those facts from CSXT dispatching records had he bothered to check those records instead of being so anxious to create the impression that M&W had not utilized the CSXT crossings at Defiance at any recent time, prior to the arson fire of December, 2001. This approach by Mr. Thoburn is either careless or an attempt to distort the facts. Finally, I note that Mr. Thoburn's Exhibit B is a picture which M&W supplied in its original complaint, which shows that CSXT had not been maintaining the diamond crossings at Defiance prior to CSXT's removal of same. The picture shows where CSXT had disconnected the connecting track between the two diamonds in M&W's mainline (in May of 2002), rather than correct the track creep caused by CSXT's train operations over the crossings.

7. One other false assertion included in Mr. Thoburn's statement and echoed in other CSXT statements and arguments must be addressed. Mr. Thoburn proffers a letter from myself to Mr. Mark Demaline, then CSXT's shortline liaison person, dated April 10, 2002, apparently intended to support Mr. Thoburn's claim that M&W had requested "...free..." rail from CSXT. However, any impartial reader of that letter would conclude, correctly, that the letter was part of an ongoing discussion between CSXT and M&W concerning ways to increase traffic volume moving between the two carriers. That discussion was initiated by CSXT shortline personnel in a public meeting where numerous other shortlines were in attendance the previous December. The key item from this letter which Mr. Thoburn chooses to distort, (other than taking it out of the intended context) is listed on page two, Item 2 in the "Assistance Sought" section. Mr. Thoburn and others from CSXT have purposely chosen to misrepresent that section as being a

request from M&W to CSXT to provide "...free.." rail to help rebuild M&W's lightly railed mainline. However, read this item carefully. What it actually asks is if CSXT would "...make 110# or heavier rail available (emphasis added)." Note that no mention is made of requesting such rail for free as Mr. Thoburn and other CSXT officials imply. The request was merely intended to take CSXT up on an offer it made publicly at its annual shortline meeting the previous December. CSXT had indicated at that meeting that it would allow its shortline connections first priority to access surplus rail materials from its own rail replacement program, before CSXT attempted to sell the same on the open market. Thus, Mr. Thoburn again engages in an uninformed misinterpretation of the facts.

Mr. Martin's verified statement also contains a number of inaccuracies which require correction:

1. Mr. Martin notes that CSXT constructed a second mainline as part of CSXT's intended takeover of Conrail. What is clear is that CSXT knew before it undertook such a project that it crossed the M&W mainline at Defiance, Ohio, and that the cost of maintaining that crossing was CSXT's sole responsibility. Nevertheless, CSXT chose to double track its line through the Defiance area. This was not a decision which M&W induced, encouraged, or required. It was solely CSXT's decision. It should be pointed out that other options for building capacity and routing trains within the combined CSXT-Conrail system did exist. Nevertheless, CSXT made the decision it made, with complete knowledge as to its responsibilities for maintenance at the Defiance crossing. Thus, for CSXT to now complain of excessive cost is not something to which the STB should give any weight in deciding this dispute. The decisions of CSXT to build

its capacity where it did and to route its traffic volume as it did and continues to do, was a decision made solely by CSXT for its own commercial benefit

2. Mr. Martin also states that: "...Petitioners have mischaracterized CSXT's operation of the double track.", and goes on to imply that CSXT does not operate its trains in a uni-directional basis on the two tracks it operated through Defiance, Ohio. While his statement may now be true, it does not change the fact that it was CSXT's mode of operation at the point of the two crossing diamonds which caused them to "creep" in opposite directions, a condition which has been clearly demonstrated by pictures originally submitted by M&W and RMW in our Petition. Regardless of how CSXT chooses to characterize its train operations through Defiance, three things are crystal clear: a) that CSXT's train operations caused certain maintenance issues to arise relative to the dual crossing diamonds at Defiance; b) that CSXT's operations were the choice solely of CSXT, and; c) CSXT chose to avoid its duty to maintain those crossing diamond by removing them instead of repairing them.

3. Mr. Martin suggests in his verified statement that it is somehow M&W's responsibility to fix the problems which CSXT caused by its (CSXT's) own actions. If the STB elects to not take jurisdiction over the CSXT crossing of the M&W's track and right of way and RMW's property, then CSXT has no legal right to occupy the RMW land and right of way. The land is owned in fee simple title by RMW and its predecessors in interest since 1853, thirty plus years before CSXT's predecessor first crossed that land. CSXT is a licensee crossing railroad and as long as it fulfilled its responsibility to maintain its crossing of M&W's line in good order, it continued to have a licensee status. However, since CSXT removed M&W's tracks from its right of way

and used RMW's property without its consent, CSXT's only status relative to our land and right of way is as an unauthorized and unwanted trespasser.

The following corrections are submitted in response to the Verified Statement of Steven Davis:

1) Mr. Davis' verified statement is perhaps the most self-serving of all the CSXT witnesses. While there are many inaccuracies in his statement, one fact is omitted which is very telling and which clearly indicates his lack of credibility. Correspondence and public statements from Mr. Davis regarding the Defiance West industrial park, which is serviceable from the tracks of both CSXT and M&W, make it obvious that CSXT utilized the removal of the crossing diamonds at Defiance to prevent M&W competition for the traffic of that new rail customer and all future rail business at this jointly served 700+ acre industrial park development. Reference to Mr. Davis' correspondence is noted for the Board's review elsewhere in our rebuttal.

2). Mr. Davis indicates that he has "...only located one new business, Standridge Color, on a CSXT served site in the last 18 years in the Defiance area". While this is undoubtedly true, he seems to imply that this is an indication of the lack of development potential in that area of Ohio. Nothing could be further from the truth. The facts are that Defiance is a vibrant, growing community, which has had numerous new businesses locate in it in the past few years. The fact that none of these businesses have located on CSXT served sites, probably says more about CSXT's inability to offer competitive rate and service offerings. Industrial sites which have the potential for competition from two railroads, such as those served by M&W, are in high demand. Secondly, the industrial park development west of the crossing diamonds is relatively

new and development can be expected to increase as that industrial park continues to grow and market itself. With 700+ acres of prime industrial land, this facility can be expected to generate a significant volume of rail business, business for which M&W will be in position to compete once CSXT restores M&W's mainline by re-installing the diamonds.

3) Mr. Davis, who does not claim to have any railroad operational background, nevertheless attempts to characterize certain embargoes which M&W had issued from time to time relative to its own line operation. I have already set forth the facts surrounding the relevant embargo related to the arson fire of our bridge at M.P. 64.49. However, Mr. Davis insists in introducing references to other embargoes, which are totally unrelated to the crossing diamonds, or to M&W's service over that crossing to and from the west. For example, Mr. Davis references an embargo of M&W bridge #860 at M.P. 50.25. This bridge is east of the Defiance crossing and was embargoed only in reference to overweight cars. This bridge is also occupied by an 8" natural gas pipeline and Ohio Edison wanted to traverse the bridge with new overweight electric generators for its new electric plant east of Defiance. M&W embargoed the bridge, until bridge engineers could certify its safety for such service. The presence of the natural gas pipeline was of particular concern, prior to the engineering analysis. Ultimately, the bridge was certified and the generators moved safely over the structure to their destination. During the entire embargo period normal M&W traffic continued to use this structure. None of this, of course has any relevance to CSXT's removal of the crossing diamonds at Defiance, which are west of this bridge by approximately one mile.

4) Mr. Davis, who is not a certified track inspector, nor has any experience in operating or otherwise managing a shortline railroad, spends much of his verified statement and attached exhibits expressing his "opinion" in regard to M&W's track condition. Since Mr. Davis has no expertise in this area of railroad technology, any opinion expressed by him on these matters should be given little weight. Secondly, his pictures provide no insight, except to demonstrate that the track which M&W has been unable to use due to CSXT's removal of the crossing diamonds tends to grow weeds. M&W has elsewhere demonstrated that it had on-gong traffic volumes servicing numerous customers prior to the arson fire and CSXT's failure to maintain the crossing diamonds and their removal. We have also demonstrated from current customers a continuing desire to again have the option of moving traffic to and from M&W's interchange with NS at Woodburn, Indiana. These customers are being artificially prevented from exercising their right to choose the route and carriers they find most beneficial to the conduct of their business. CSXT's removal of the crossing diamonds is artificially and anticompetitively blocking those choices by the shipping public.

5) Mr. Davis comments concerning the potential of M&W's line to carry high-speed rail service is an indication that he has not been paying attention to major industry development in his own territory. Attached at Exhibit D are excerpts from the final study done to select the route of the Nine State Mid-West Rail Consortium. It will be noted that the southern route which includes M&W's line of railroad from Woodburn, Indiana through Defiance to Liberty Center-Ohio is part of the selected and preferred southern high speed rail route. It will also be noted that the study projects some \$211 million in investment by the High Speed Rail Consortium in the Woodburn to Liberty

Center line. M&W never represented that it would be spending the necessary funds to accomplish that upgrade, but rather a group of nine mid-western states has indicated their interest in providing such funding and that group has designated the M&W line for this purpose. CSXT recently sold its line from Chicago to Ft. Wayne, Indiana and this line has also been designated as part of the same high speed rail route. A review of the attendance list at various meetings where the study's findings and recommendations were publicly presented will show that various CSXT officials were in attendance.

6. Finally, Mr. Davis claims on page 215 of his verified statement that CSXT is not intentionally blocking M&W's access to the industrial park west of the Defiance crossing. He offers as evidence of CSXT's "goodwill" its offer to build the "Alternative" crossing arrangement. However, Mr. Davis has made it clear in his own internal correspondence that CSXT will attempt to do anything to prevent M&W from achieving access to the industrial park. CSXT knows and M&W has demonstrated that the crossing "Alternative" is not workable and is intended only to severely restrict M&W's ability to operate and offer competitive service. Knowing that the CSXT "alternative", if implemented, would restrict M&W operations and impose unacceptable added operational costs on M&W, allows Mr. Davis and CSXT to pretend to provide an alternative when, in fact, the "alternative" offered is a sham. CSXT's refusal to even consider a commitment to re-install the crossing diamonds if their "alternative" proves unworkable or imposes unacceptable additional operating costs on M&W is a clear indication that CSXT is merely posturing for further delays and hopes to keep M&W from operating its own main line and providing competitive service to existing and new customer in the industrial park west of the Defiance crossing.

CONCLUSION

Over the last several years, M&W and RMW have continuously tried to work with CSXT to resolve CSXT's unilateral removal of the crossing diamonds at Defiance. Obviously, to be forced to initiate a proceeding before the STB to obtain the relief which we seek is not an action which a Class III carrier wishes to take against its Class I connection. On repeated occasions, we have asked CSXT to honor its commitment to M&W and to the Board to reinstall the crossing diamonds. However, as indicated by CSXT internal documents and its October 27, 2005 response, CSXT continues to evade that commitment and to come up with self serving justifications for refusing to do what it told the Board and M&W it would do. The CSXT proposed alternative is nothing but a continuation of the efforts of CSXT's operating, engineering, signal, administrative and marketing departments to devise whatever crossing scenario will give lip service to M&W's and RMW's crossing rights while preventing M&W from reinstituting rail service to its customers. Despite CSXT's representations to M&W and the STB that the removal of the diamonds had nothing to do with competitive access to the Defiance Industrial Park, CSXT internal documents now show that the principal reason CSXT has deferred and delayed any action in response to M&W request for reinstallation of the diamonds was precisely because it was trying to come up with some pretext upon which to avoid replacing the diamonds and providing M&W with direct access to that industrial park and the shippers located or to be located in that facility, and to the rest of the M&W line west of the diamonds.

Throughout this dispute, CSXT has been motivated by its reluctance to incur the required maintenance cost associated with the crossing diamonds. It has been acutely

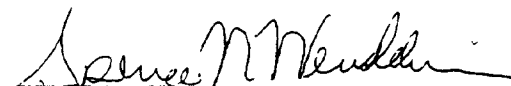
aware of and intent on obtaining any operational advantage which it could derive from the removal of these diamonds while also precluding competitive rail service by M&W. CSXT has sought to manipulate and utilize its removal of the crossing diamonds to its maximum competitive advantage and to propose alternative crossing arrangements which will not enable M&W to operate with any degree of independence or efficiency across CSXT's heavily utilized main lines.

Despite these facts, it is not M&W's and RMW's preferred solution for the Board to direct CSXT to remove its tracks and rail facilities from M&W's right of way at Defiance, Ohio. Rather, we ask that the Board issue a crossing construction order and a declaration of crossing rights directing that CSXT may cross M&W tracks and right of way if and only if it immediately restores the Defiance crossing diamonds in a manner that will not materially interfere with M&W operations of its main line through that crossing. We also request that as the crossing carrier, CSXT be directed as a condition of its crossing authorization, to maintain the crossing diamonds and M&W track immediately adjacent to or between the diamonds at its sole cost and expense and to compensate M&W for its use and occupancy of the M&W right of way for crossing purposes in accordance with long standing industry priorities.

VERIFICATION

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

Executed on 11-23, 2005.


Spencer N. Wendelin



3085 WOODMAN DRIVE, SUITE 300 • DAYTON, OHIO 45420-1159 • 937-643-1240 • FAX 937-643-1203

11/23/05

Mr. Spencer Wendelin
Maumee & Western Railroad
Suite A
205 N. Capitol Ave.
Corydon, IN 47112

VIA FAX

Re: CSX diamond in Defiance, Ohio

Dear Spence:

In November of 2003, I wrote a letter to you concerning CSX maintenance activities on the track in Defiance Ohio in which they removed the diamond that would allow Maumee & Western (MAW) traffic to cross that line. I realize our facility in Paulding, Ohio and our customers didn't have access to the CSX system then and we don't now, but it has always been our goal to return service via the CSX. If there is no diamond, then we will be at the very least, further delayed in service. I think it is crucial to continue every effort to give our customers the option of competitive service, thus getting this section of the line operable. Any delays, or increased hurdles, to achieving this goal only hurts the customers and the railroad. I would greatly appreciate your attention to this matter.

Sincerely,

SYSTECH ENVIRONMENTAL CORPORATION

A handwritten signature in black ink, appearing to read "Terri L. Kanouse".

Terri L. Kanouse
Operations Manager

Cc: Phil Randall



** TOTAL PAGE.01 **



Johns Manville

A Berkshire Hathaway Company

10100 W. Ute Avenue (80127)
P.O. Box 625005
Littleton, CO 80162-5005
303 978 2000

November 7, 2005

Mr. Spence Wendelin, President
Maumee and Western Railroad
205 N. Capitol Ave. Suite A
Corydon IN 47112

Dear Spence,

Johns Manville Received over 600 carloads over the past 12 months of raw materials for our facility in Defiance Ohio served by the Maumee & Western. This traffic had to move via CSXT since the diamond crossing of the MAW and the CSXT was removed.

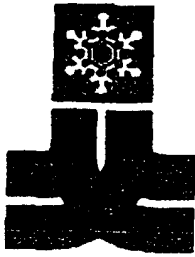
Only having the CSXT as the sole transportation to the MAW has placed Johns Manville in a position of not being able to negotiate freight rates and service with another class one railroad for our raw materials. We have tried, unsuccessfully, to find alternative routings in order to reduce transportation costs. Without access by MAW to the NS we have been at the mercy of the CSXT that has resulted in increased costs, depriving Johns Manville of the ability to negotiate with other carriers for better rates, service and car supply.

We support your request to the STB to require CSXT to re-install the diamond crossings at Defiance Ohio so we and other Maumee & Western customers will be able to take advantage of competitive rail transportation.

Sincerely,

Gary Manfield

Senior Transportation Analyst.....Johns Manville



INTERSTATE COLD STORAGE, INC.

NAPOLEON (TOLEDO) FACILITY

1 INTERSTATE DRIVE • NAPOLEON, OHIO 43545

TELEPHONE: (419) 599-0510

FAX: (419) 599-1565

November 10, 2005

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

Dear Spence,

I would like to go on record as supporting the Maumee & Western in litigation with the Surface Transportation Board regarding the crossing at Defiance, Ohio between the MAW and the CSXT.

At present the MAW and Interstate Cold Storage are 'locked' into service via the CSXT for our facility in Napoleon, Ohio.

With the crossing in Defiance gone, we have a definite disadvantage in our transportation cost by not having access to rates and service from the NS.

Please convey this message to the STB requesting they do whatever is necessary to resolve this issue in favor of the MAW. Competition is key to success.

We support your request to the STB to require the CSXT to re-install the diamond crossings at Defiance, Ohio.

Very Truly Yours,

Russell R. Borstelman
INTERSTATE COLD STORAGE

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FAX: (614) 676-8641

COLUMBUS II FACILITY
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GLENN HUNTER & ASSOCIATES, INC.

3672 Co. Rd. 6-1 ~ Delta, OH 43515 ~ Phone: 419-822-3744 ~ Fax: 419-822-3512

November 7, 2005

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

Dear Spence:

I understand the Maumee and Western had requested assistance from the Surface Transportation Board regarding the crossing at Defiance, OH between the MAW and the CSXT.

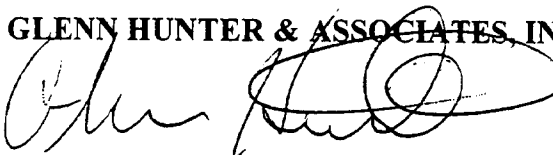
The removal of the diamond crossing has resulted in our company incurring additional transportation costs by being captive to just the CSXT for materials destined to our company.

We have lost the competitive edge we had when we could use either NS or CSXT for our shipments. As a result, we estimate our transportation costs, not including the fuel surcharges, have risen by more than 20%. Being captive to just one class 1 carrier when we had two, results in a negative position for our company both in rates and in car supply.

We support the Maumee and Western's request for reinstatement of the crossing with CSXT. This access will permit MAW to again offer competitive transportation services from both CSXT and the NS to the benefit of both our customers and us.

Best regards,

GLENN HUNTER & ASSOCIATES, INC.

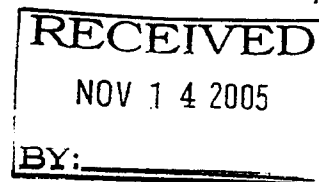


Glenn Hunter, President

GH/jw



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260-632-4221 Elevator
260-632-5685 Plant Food
260-632-4222 FAX

November 4, 2005

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

Dear Spence,

I understand the Maumee & Western are in litigation with the Surface Transportation Board regarding the crossing at Defiance, OH between the MAW and the CSXT and wish to offer our support for your action.

At present we can only ship and receive using the MAW and NS from and to our elevator at Woodburn, IN.

With the crossing in Defiance gone, we have a definite disadvantage in our transportation costs, a two-line haul vs. a single line or the ability to use either the NS or CSXT from other origin carriers.

Having the connection at Defiance would provide a competitive edge both in rates, service and car supply.

We support your request to the STB to require the CSXT to re-install the diamond crossings at Defiance, OH.

Sincerely,

Craig Sherbahn
Grain Merchandiser
Ag Plus

Jeffrey S. Mize
CEO
Ag Plus



November 23, 2005

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

Dear Spence,

I would like to go on record as supporting the Maumee and Western in litigation with the Surface Transportation Board regarding the crossing at Defiance, Ohio between the MAW and the CSXT.

At present we are 'locked' into service via the CSXT for our facility in Napoleon, Ohio.

With the crossing in Defiance gone, we have a definite disadvantage in our transportation costs by not having access to rates and service from the NS.

Please contact the STB requesting they do whatever is necessary to resolve this issue in favor of the MAW. Competition is necessary to remain in business.

We support your request to the STB for access over the CSXT at Defiance, Ohio.

Very truly yours,


Dale Lilleholm
General Manager

FROM :

FAX NO. : 4192588811

Nov. 23 2005 11:39AM P1

Antwerp Equity Exchange Company

Antwerp
103 S. Cleveland St.
419-258-8465

Sherwood
100 Farm Bureau
419-899-2130

November 22, 2005

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

Dear Spence,

I understand the Maumee and Western are in litigation with the Surface Transportation Board regarding the crossing at Defiance, OH between the MAW and the CSXT.

At one time we had been able to ship grain from our elevator in Antwerp, OH via Defiance to destinations on the CSXT. At present we can only ship to markets on the NS while the grain market on the CSXT is better for us than the alternative.

With the crossing gone, we are not able to ship to points on the CSXT and this is a definite disadvantage to our farmers and our elevator.

Competition is the name of the game in industry and without access to CSXT markets, we are not as competitive as we could be.

We support the Maumee Western's request for reinstallation of the diamond or alternative connection.

Sincerely,



Steven C. Fast
General Manager

File: OmniSource

*ed

Spence - 3 pages -
Pete - Need cost estimate
for Omni access.

R 11-27-99

November 26, 1999

Mr. Phillip E. Randall
Transmark Associates
5969 Hawthorne Drive
Sylvania, Ohio 43560

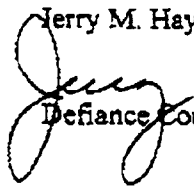
Phil,

Here is a copy of the letter sent to Mr. Eisbart on November 4th outlining the City of Defiance's offer to assist OmniSource Corporation. The street access to the west that would be allowed by getting the city land seemed very appealing to Mr. Eisbart.

Please try to send me a cost estimate for two switches and the necessary rail sidings to provide Maumee & Western rail service to OmniSource. If Mr. Eisbart should accept the city's offer we will need to have these numbers to frame the financial details for Defiance City Council.

Thanks for your help. I will be in touch.

Jerry M. Hayes



Defiance County Economic Development Office

**ECONOMIC DEVELOPMENT
OF DEFIANCE COUNTY**

197-28-1 ISLAND PARK AVENUE • DEFIANCE OHIO 43512-2551
TEL 419-784-4471 OR 800-283-9342
FAX 419-734-4157

EXHIBIT B

*ed

November 4, 1999

Mr. Ben Eisbart
Corporate Director
OmniSource Corporation
1610 North Calhoun Street
Fort Wayne, Indiana 46808

Dear Mr. Eisbart:

Per our recent conversations, I have consulted with the City of Defiance, the Defiance County Commissioners, the Ohio Department of Development and FirstEnergy to respond to OmniSource Corporation's opportunity to expand their iron briquetting business. The Defiance County Economic Development Office is proposing the following tax and financial package to entice OmniSource to expand production at your Defiance, Ohio facility:

Availability of City of Defiance Property

The City of Defiance owns 6.64 acres just west and adjacent to the OmniSource facility that will be made available to the company on a long-term lease for an annual lease payment of \$1 per year. This lease will run for the full term of an accompanying Tax Increment Financing agreement. OmniSource may purchase the land at the end of the TIF agreement for \$1. This land is within the city limits and is zoned M-3.

Tax Increment Financing Plan

The City of Defiance will agree to enter into a Tax Increment Financing agreement (TIF) with OmniSource to finance the following:

- a) An extension or curb cut of Quality Drive to provide appropriate paved truck access from the west to your plant.
- b) An extension of the city water line to the property line of your new expansion project, if needed.
- c) An extension of the city sewer line to the property line of your new expansion project, if needed.
- d) A portion of the cost of constructing rail spurs and switches from the Maumee and Western Railroad if determined necessary for approval of this expansion by OmniSource. The offer is subject to a maximum investment by the city of \$75,000. This offer is also contingent on the designation of the rail spurs and switches to be infrastructure for a public purpose by Defiance City Council.

ECONOMIC DEVELOPMENT OF DEFIANCE COUNTY

197-28-1 ISLAND PARK AVENUE - DEFIANCE OHIO 43512-2661
TEL 419-784-4471 OR 800-283-3342
FAX 419-784-4157

★
ed**Tax Abatement through the Defiance Enterprise Zone**

The City of Defiance, through its Enterprise Zone Program, will provide a 100% tax abatement on new investment into personal property and additional inventory for a 10 year period under an agreement whereby the Defiance City School District and Four County Joint Vocational School would receive an annual payment from the company equal to approximately 38% of the value of the abatement. This would in essence provide a 62% net tax abatement to OmniSource.

Ohio Investment Tax Credit for Capital Equipment

The State of Ohio has enacted an Investment Tax Credit (ITC) Program under which OmniSource could take a credit of 7.5% of its total machinery and equipment investment, divided by seven years against its state corporate or franchise tax liability.

State of Ohio 166 Loan

The State of Ohio would consider making a long-term \$350,000 loan @ 5% to assist in the financing of the project's fixed assets.

State of Ohio Rail Development Commission

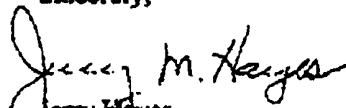
The State of Ohio, through its Rail Development Commission, would consider making a long-term, low-interest loan to OmniSource or the Maumee and Western Railroad to facilitate the construction of a spur to provide dual rail service at the Defiance facility. This loan could be coupled with the City of Defiance TIF agreement to cover the needed improvements.

City of Defiance Revolving Loan Fund

The city will consider an application to its Revolving Loan Fund for a low-interest loan. This source will be appropriate for modest "gap" financing needed to complete the financing package.

We look forward to working with you further on this important project. If you have any questions or need clarification on anything outlined in this letter, please feel free to contact me. (419-784-4471)

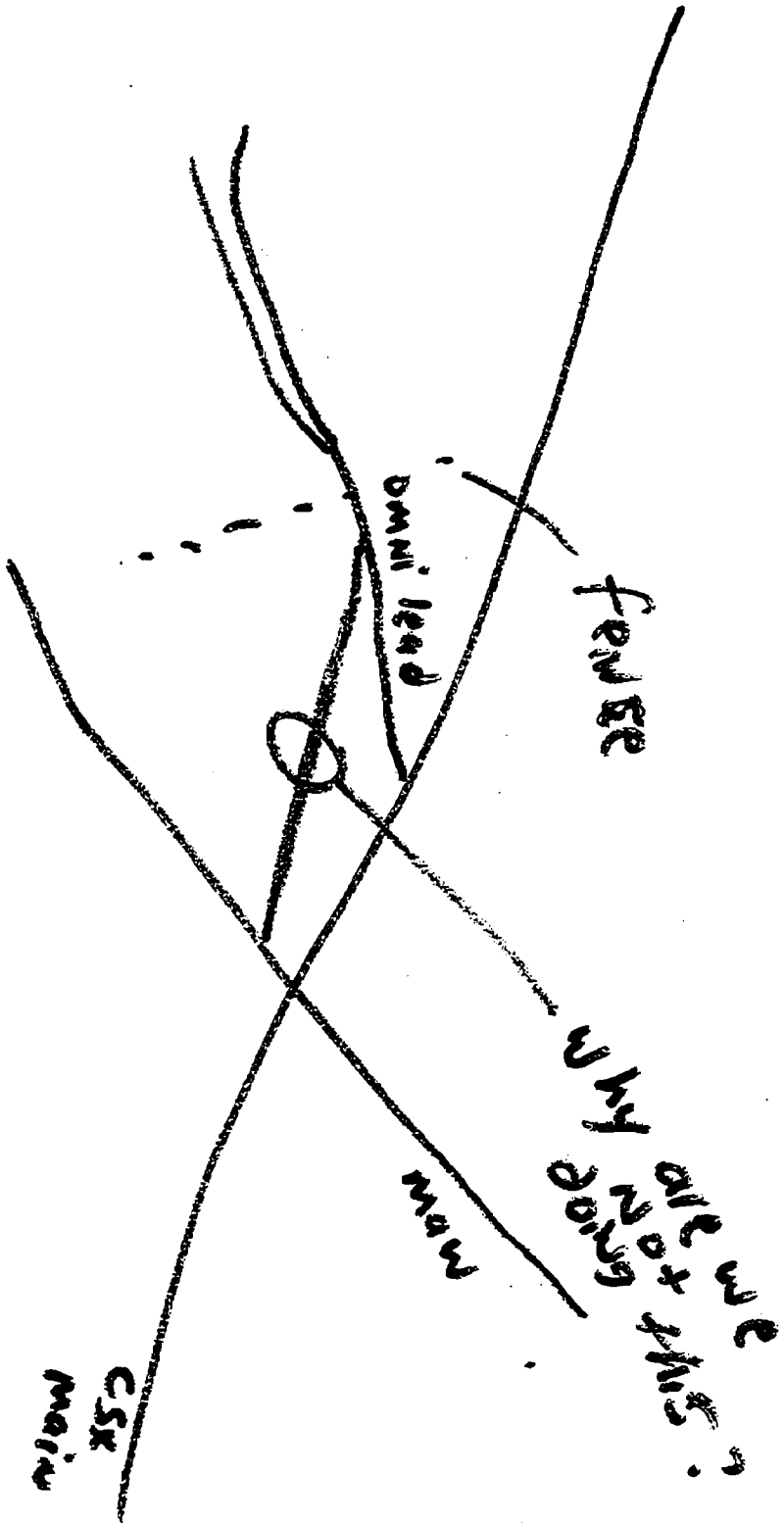
Sincerely,


Jerry Hayes
Acting Director

**ECONOMIC DEVELOPMENT
OF DEFIANCE COUNTY**

197-25-1 ISLAND PARK AVENUE · DEFIANCE OHIO 43512-2351
TEL 419-784-4471 OR 800-283-3342
FAX 419-734-4157

Pete



MAW FAX MEMORANDUM

File: OmniSource
Defiance Expansion

DATE: September 16, 1999

TO: Spence Wendelin

FR: Phil Randall

SUBJECT: Potential expansion of OmniSource facility at Defiance, OH

Confirming telephone conversation, above subject, and my memo covering lease cars and the expansion project.

I received a call from Jerry Hayes, Acting Director, Economic Development of Defiance County regarding this project. Defiance is trying very hard to keep OmniSource in Defiance and are offering various incentives.

Defiance officials are hopeful that the MAW will work with them to access OmniSource and be able eventually to reach their 640 acre industrial park. They have asked that I make contact with OmniSource regarding potential traffic for our line.

Mr. Hayes is asking for a 'ballpark' figure on cost to install switch and trackage to OmniSource.

He believes there may be some city money available to help cover this cost.

Sent with this fax is a partial copy of message from OmniSource regarding scrap volumes. Do you wish to make a joint contact on Phil Bedwell and if so, when?

PER/gjr

cc: Data Bell - Please advise estimate for materials and labor for installation of switch and

track.

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report

INITIALS & LAST NAME

☐ L ☐ R ☐ O ☐ T ☐ H ☐ A ☐ C ☐ H ☐ I ☐ L ☐ K

HOME

☐ D ☐ P ☐ Z

CALL PLACE DATE & TIME

☐ D ☐ R ☐ P ☐ 1 ☐ A ☐ M ☐ C ☐ R ☐ 0 ☐ 5 ☐ 1 ☐ 7 ☐ 0 ☐ 1

☐ 0 ☐ 6 ☐ 3 ☐ 0

SUBJECT TO HOURS OF SERVICE?

1) ☒ X ☐ Y ☐ N
2) ☐ X ☐ Y ☐ N
3) ☐ X ☐ Y ☐ N

SUPERVISOR

☐ G ☐ 1 ☐ 5

AIR CODE

☐ D ☐ P ☐ C ☐ R

HOURS OF SERVICE TITLE

☐ C ☐ O ☐ N ☐ D

PAY CLAIM

☐ 0 ☐ 9 ☐ 0 ☐ 0

OVERTIME CLAIM

☐ 0 ☐ 0 ☐ 3 ☐ 0

PAY CLASS

☐ C ☐ O ☐ N ☐ D

S CODE

☐ 7

WRITTEN DESCRIPTION OF WORK BY NUMBER

*SPOT CSKT 7, TRAIN TO CASH, PULL & SPOT, OVERSEEN, TRAIN TO DP & SPOT CSKT 7 5 CASHES
3 CASHES TO GALL, UNIT, THE BRIDGE, WORK ROAD, GET OUT MANHOLE*

1) FIRST WENT ON DUTY

PLACE DPZ
DATE 05-17-2001
TIME 0630

2) BEGIN DUTY HRS OF SERVICE

DPZ

3) OFF DUTY HRS OF SERVICE

DPZ

4) FINAL RELEASE ALL DUTY

05-17-2001
1600

INSTRUCTIONS:	
A)	Complete Column 1 and 4 if Not subject to hours of service
B)	Complete column 2 and 3 if ONLY hours of service
C)	Complete Column 1, 2, 3 and 4 if CONTINGUED service
D)	If hours of service are split, indicate with slash (/)

OFFICE USE ONLY			
REGULAR HOURS	OVERTIME HOURS	SUPERVISOR INITIAL	
Hours Minutes	Hours Minutes		
☐ 9 ☐ 0 ☐ 0	☐ 3 ☐ 0	☐ D ☐ P ☐ Z	

COMPLETE ALL ITEMS BELOW ONLY IF SUBJECT TO HOURS OF SERVICE

LOCOMOTIVE REPORT

UNIT & JOB CODE

DELAY REPORT

LOCATION	STOP	START	CAUSE

LENGTH OF TIME OFF DUTY PRIOR

☐ 1 ☐ 2 ☐ 0 ☐ 0

ACTUAL HRS WORKED

HRS OF SERVICE DUTY

☐ 0 ☐ 9 ☐ 3 ☐ 0

HOLLOWING COMPLETED

OR DEAD END

☐ 0 ☐ 0 ☐ 0

PT	STATION	M.P.	H.R.	CARBONICLED		TIME	
				L	E	Start	Finish
	SPOT CSKT 7	125		2	3	0630	0730
	TO CASH			1	1	0830	1015
	TO DP			-	5	1115	1215
	TO BRIDGE			-	3	1400	1435
	TO DPZ			A/Z		1440	1500

EMPLOYEE SIGNATURE

Erny Rothacker

APPROVING SIGNATURE

T. J. Allen

DATE

05-17-2001

DATE

5-18-01

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report

08
J. W. KILTON

CALL PLACE DATE & TIME

Mr. D. Yr. B2701 0630

REGULAR HOURS: 11 30 0815
OVERTIME HOURS: 30 10 30 1245
TOTAL HOURS: 11 30 0815

ATTENDES: HOURS OF SERVICE BY NUMBER
Set out CSX cars / Build WBT / On lot / To sup MP 547 / Drive Defiance
Set out CSX cars / Build WBT / On lot / To sup MP 547 / Drive Defiance

INSTRUCTIONS
A) Complete Column 1 and 4 if not subject to hours of service
B) Complete column 2 and 3 if ONLY hours of service
C) Complete Column 1, 2, 3 and 4 if nonexempt source
D) If hours of service are split, indicate with slash (/)

1) FIRST NAME: DEFANCE
2) BEGIN DATE: 0630
3) END DATE: 0630
4) FINAL RELEASE: 8627-01

OFFICE USE ONLY

REGULAR HOURS: 11 30 0815
OVERTIME HOURS: 30 10 30 1245
TOTAL HOURS: 11 30 0815

COMPLETE ALL ITEMS BELOW ONLY IF SUBJECT TO HOURS OF SERVICE

LOCOTIME REPORT

UNIT & JOB CODE
Maw 345 DENA
16

LOCATION: START: CAUSE:

Table with 4 columns: STATION, MP, RB, TIME. Rows include 5 0830 0815, 30 10 30 1245, 30 11 50 1510, 30 12 00 1655.

EMPLOYEE SIGNATURE: J. W. Kilton
APPROVING SIGNATURE: J. P. Miller

DATE: 8-27-01
DATE: 8-27-01

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report

INITIALS & LAST NAME

☐ L ☐ ROTHACHER

HOME

☐ DP

CALL PLACE DATE & TIME

Mo Di We Th Fr Sa Su
09 24 01 04 11 18 25 30

Place

DEER 1 AMCL 04 11 18 25 30

SUBJECT TO HOURS OF SERVICE

1) ☒ Y ☐ N
2) ☐ Y ☐ N
3) ☐ Y ☐ N

SUPERVISOR

☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ 11 ☐ 12 ☐ 13 ☐ 14 ☐ 15 ☐ 16 ☐ 17 ☐ 18 ☐ 19 ☐ 20 ☐ 21 ☐ 22 ☐ 23 ☐ 24 ☐ 25 ☐ 26 ☐ 27 ☐ 28 ☐ 29 ☐ 30 ☐ 31 ☐ 32 ☐ 33 ☐ 34 ☐ 35 ☐ 36 ☐ 37 ☐ 38 ☐ 39 ☐ 40 ☐ 41 ☐ 42 ☐ 43 ☐ 44 ☐ 45 ☐ 46 ☐ 47 ☐ 48 ☐ 49 ☐ 50 ☐ 51 ☐ 52 ☐ 53 ☐ 54 ☐ 55 ☐ 56 ☐ 57 ☐ 58 ☐ 59 ☐ 60 ☐ 61 ☐ 62 ☐ 63 ☐ 64 ☐ 65 ☐ 66 ☐ 67 ☐ 68 ☐ 69 ☐ 70 ☐ 71 ☐ 72 ☐ 73 ☐ 74 ☐ 75 ☐ 76 ☐ 77 ☐ 78 ☐ 79 ☐ 80 ☐ 81 ☐ 82 ☐ 83 ☐ 84 ☐ 85 ☐ 86 ☐ 87 ☐ 88 ☐ 89 ☐ 90 ☐ 91 ☐ 92 ☐ 93 ☐ 94 ☐ 95 ☐ 96 ☐ 97 ☐ 98 ☐ 99 ☐ 100 ☐ 101 ☐ 102 ☐ 103 ☐ 104 ☐ 105 ☐ 106 ☐ 107 ☐ 108 ☐ 109 ☐ 110 ☐ 111 ☐ 112 ☐ 113 ☐ 114 ☐ 115 ☐ 116 ☐ 117 ☐ 118 ☐ 119 ☐ 120 ☐ 121 ☐ 122 ☐ 123 ☐ 124 ☐ 125 ☐ 126 ☐ 127 ☐ 128 ☐ 129 ☐ 130 ☐ 131 ☐ 132 ☐ 133 ☐ 134 ☐ 135 ☐ 136 ☐ 137 ☐ 138 ☐ 139 ☐ 140 ☐ 141 ☐ 142 ☐ 143 ☐ 144 ☐ 145 ☐ 146 ☐ 147 ☐ 148 ☐ 149 ☐ 150 ☐ 151 ☐ 152 ☐ 153 ☐ 154 ☐ 155 ☐ 156 ☐ 157 ☐ 158 ☐ 159 ☐ 160 ☐ 161 ☐ 162 ☐ 163 ☐ 164 ☐ 165 ☐ 166 ☐ 167 ☐ 168 ☐ 169 ☐ 170 ☐ 171 ☐ 172 ☐ 173 ☐ 174 ☐ 175 ☐ 176 ☐ 177 ☐ 178 ☐ 179 ☐ 180 ☐ 181 ☐ 182 ☐ 183 ☐ 184 ☐ 185 ☐ 186 ☐ 187 ☐ 188 ☐ 189 ☐ 190 ☐ 191 ☐ 192 ☐ 193 ☐ 194 ☐ 195 ☐ 196 ☐ 197 ☐ 198 ☐ 199 ☐ 200 ☐ 201 ☐ 202 ☐ 203 ☐ 204 ☐ 205 ☐ 206 ☐ 207 ☐ 208 ☐ 209 ☐ 210 ☐ 211 ☐ 212 ☐ 213 ☐ 214 ☐ 215 ☐ 216 ☐ 217 ☐ 218 ☐ 219 ☐ 220 ☐ 221 ☐ 222 ☐ 223 ☐ 224 ☐ 225 ☐ 226 ☐ 227 ☐ 228 ☐ 229 ☐ 230 ☐ 231 ☐ 232 ☐ 233 ☐ 234 ☐ 235 ☐ 236 ☐ 237 ☐ 238 ☐ 239 ☐ 240 ☐ 241 ☐ 242 ☐ 243 ☐ 244 ☐ 245 ☐ 246 ☐ 247 ☐ 248 ☐ 249 ☐ 250 ☐ 251 ☐ 252 ☐ 253 ☐ 254 ☐ 255 ☐ 256 ☐ 257 ☐ 258 ☐ 259 ☐ 260 ☐ 261 ☐ 262 ☐ 263 ☐ 264 ☐ 265 ☐ 266 ☐ 267 ☐ 268 ☐ 269 ☐ 270 ☐ 271 ☐ 272 ☐ 273 ☐ 274 ☐ 275 ☐ 276 ☐ 277 ☐ 278 ☐ 279 ☐ 280 ☐ 281 ☐ 282 ☐ 283 ☐ 284 ☐ 285 ☐ 286 ☐ 287 ☐ 288 ☐ 289 ☐ 290 ☐ 291 ☐ 292 ☐ 293 ☐ 294 ☐ 295 ☐ 296 ☐ 297 ☐ 298 ☐ 299 ☐ 300 ☐ 301 ☐ 302 ☐ 303 ☐ 304 ☐ 305 ☐ 306 ☐ 307 ☐ 308 ☐ 309 ☐ 310 ☐ 311 ☐ 312 ☐ 313 ☐ 314 ☐ 315 ☐ 316 ☐ 317 ☐ 318 ☐ 319 ☐ 320 ☐ 321 ☐ 322 ☐ 323 ☐ 324 ☐ 325 ☐ 326 ☐ 327 ☐ 328 ☐ 329 ☐ 330 ☐ 331 ☐ 332 ☐ 333 ☐ 334 ☐ 335 ☐ 336 ☐ 337 ☐ 338 ☐ 339 ☐ 340 ☐ 341 ☐ 342 ☐ 343 ☐ 344 ☐ 345 ☐ 346 ☐ 347 ☐ 348 ☐ 349 ☐ 350 ☐ 351 ☐ 352 ☐ 353 ☐ 354 ☐ 355 ☐ 356 ☐ 357 ☐ 358 ☐ 359 ☐ 360 ☐ 361 ☐ 362 ☐ 363 ☐ 364 ☐ 365 ☐ 366 ☐ 367 ☐ 368 ☐ 369 ☐ 370 ☐ 371 ☐ 372 ☐ 373 ☐ 374 ☐ 375 ☐ 376 ☐ 377 ☐ 378 ☐ 379 ☐ 380 ☐ 381 ☐ 382 ☐ 383 ☐ 384 ☐ 385 ☐ 386 ☐ 387 ☐ 388 ☐ 389 ☐ 390 ☐ 391 ☐ 392 ☐ 393 ☐ 394 ☐ 395 ☐ 396 ☐ 397 ☐ 398 ☐ 399 ☐ 400 ☐ 401 ☐ 402 ☐ 403 ☐ 404 ☐ 405 ☐ 406 ☐ 407 ☐ 408 ☐ 409 ☐ 410 ☐ 411 ☐ 412 ☐ 413 ☐ 414 ☐ 415 ☐ 416 ☐ 417 ☐ 418 ☐ 419 ☐ 420 ☐ 421 ☐ 422 ☐ 423 ☐ 424 ☐ 425 ☐ 426 ☐ 427 ☐ 428 ☐ 429 ☐ 430 ☐ 431 ☐ 432 ☐ 433 ☐ 434 ☐ 435 ☐ 436 ☐ 437 ☐ 438 ☐ 439 ☐ 440 ☐ 441 ☐ 442 ☐ 443 ☐ 444 ☐ 445 ☐ 446 ☐ 447 ☐ 448 ☐ 449 ☐ 450 ☐ 451 ☐ 452 ☐ 453 ☐ 454 ☐ 455 ☐ 456 ☐ 457 ☐ 458 ☐ 459 ☐ 460 ☐ 461 ☐ 462 ☐ 463 ☐ 464 ☐ 465 ☐ 466 ☐ 467 ☐ 468 ☐ 469 ☐ 470 ☐ 471 ☐ 472 ☐ 473 ☐ 474 ☐ 475 ☐ 476 ☐ 477 ☐ 478 ☐ 479 ☐ 480 ☐ 481 ☐ 482 ☐ 483 ☐ 484 ☐ 485 ☐ 486 ☐ 487 ☐ 488 ☐ 489 ☐ 490 ☐ 491 ☐ 492 ☐ 493 ☐ 494 ☐ 495 ☐ 496 ☐ 497 ☐ 498 ☐ 499 ☐ 500 ☐ 501 ☐ 502 ☐ 503 ☐ 504 ☐ 505 ☐ 506 ☐ 507 ☐ 508 ☐ 509 ☐ 510 ☐ 511 ☐ 512 ☐ 513 ☐ 514 ☐ 515 ☐ 516 ☐ 517 ☐ 518 ☐ 519 ☐ 520 ☐ 521 ☐ 522 ☐ 523 ☐ 524 ☐ 525 ☐ 526 ☐ 527 ☐ 528 ☐ 529 ☐ 530 ☐ 531 ☐ 532 ☐ 533 ☐ 534 ☐ 535 ☐ 536 ☐ 537 ☐ 538 ☐ 539 ☐ 540 ☐ 541 ☐ 542 ☐ 543 ☐ 544 ☐ 545 ☐ 546 ☐ 547 ☐ 548 ☐ 549 ☐ 550 ☐ 551 ☐ 552 ☐ 553 ☐ 554 ☐ 555 ☐ 556 ☐ 557 ☐ 558 ☐ 559 ☐ 560 ☐ 561 ☐ 562 ☐ 563 ☐ 564 ☐ 565 ☐ 566 ☐ 567 ☐ 568 ☐ 569 ☐ 570 ☐ 571 ☐ 572 ☐ 573 ☐ 574 ☐ 575 ☐ 576 ☐ 577 ☐ 578 ☐ 579 ☐ 580 ☐ 581 ☐ 582 ☐ 583 ☐ 584 ☐ 585 ☐ 586 ☐ 587 ☐ 588 ☐ 589 ☐ 590 ☐ 591 ☐ 592 ☐ 593 ☐ 594 ☐ 595 ☐ 596 ☐ 597 ☐ 598 ☐ 599 ☐ 600 ☐ 601 ☐ 602 ☐ 603 ☐ 604 ☐ 605 ☐ 606 ☐ 607 ☐ 608 ☐ 609 ☐ 610 ☐ 611 ☐ 612 ☐ 613 ☐ 614 ☐ 615 ☐ 616 ☐ 617 ☐ 618 ☐ 619 ☐ 620 ☐ 621 ☐ 622 ☐ 623 ☐ 624 ☐ 625 ☐ 626 ☐ 627 ☐ 628 ☐ 629 ☐ 630 ☐ 631 ☐ 632 ☐ 633 ☐ 634 ☐ 635 ☐ 636 ☐ 637 ☐ 638 ☐ 639 ☐ 640 ☐ 641 ☐ 642 ☐ 643 ☐ 644 ☐ 645 ☐ 646 ☐ 647 ☐ 648 ☐ 649 ☐ 650 ☐ 651 ☐ 652 ☐ 653 ☐ 654 ☐ 655 ☐ 656 ☐ 657 ☐ 658 ☐ 659 ☐ 660 ☐ 661 ☐ 662 ☐ 663 ☐ 664 ☐ 665 ☐ 666 ☐ 667 ☐ 668 ☐ 669 ☐ 670 ☐ 671 ☐ 672 ☐ 673 ☐ 674 ☐ 675 ☐ 676 ☐ 677 ☐ 678 ☐ 679 ☐ 680 ☐ 681 ☐ 682 ☐ 683 ☐ 684 ☐ 685 ☐ 686 ☐ 687 ☐ 688 ☐ 689 ☐ 690 ☐ 691 ☐ 692 ☐ 693 ☐ 694 ☐ 695 ☐ 696 ☐ 697 ☐ 698 ☐ 699 ☐ 700 ☐ 701 ☐ 702 ☐ 703 ☐ 704 ☐ 705 ☐ 706 ☐ 707 ☐ 708 ☐ 709 ☐ 710 ☐ 711 ☐ 712 ☐ 713 ☐ 714 ☐ 715 ☐ 716 ☐ 717 ☐ 718 ☐ 719 ☐ 720 ☐ 721 ☐ 722 ☐ 723 ☐ 724 ☐ 725 ☐ 726 ☐ 727 ☐ 728 ☐ 729 ☐ 730 ☐ 731 ☐ 732 ☐ 733 ☐ 734 ☐ 735 ☐ 736 ☐ 737 ☐ 738 ☐ 739 ☐ 740 ☐ 741 ☐ 742 ☐ 743 ☐ 744 ☐ 745 ☐ 746 ☐ 747 ☐ 748 ☐ 749 ☐ 750 ☐ 751 ☐ 752 ☐ 753 ☐ 754 ☐ 755 ☐ 756 ☐ 757 ☐ 758 ☐ 759 ☐ 760 ☐ 761 ☐ 762 ☐ 763 ☐ 764 ☐ 765 ☐ 766 ☐ 767 ☐ 768 ☐ 769 ☐ 770 ☐ 771 ☐ 772 ☐ 773 ☐ 774 ☐ 775 ☐ 776 ☐ 777 ☐ 778 ☐ 779 ☐ 780 ☐ 781 ☐ 782 ☐ 783 ☐ 784 ☐ 785 ☐ 786 ☐ 787 ☐ 788 ☐ 789 ☐ 790 ☐ 791 ☐ 792 ☐ 793 ☐ 794 ☐ 795 ☐ 796 ☐ 797 ☐ 798 ☐ 799 ☐ 800 ☐ 801 ☐ 802 ☐ 803 ☐ 804 ☐ 805 ☐ 806 ☐ 807 ☐ 808 ☐ 809 ☐ 810 ☐ 811 ☐ 812 ☐ 813 ☐ 814 ☐ 815 ☐ 816 ☐ 817 ☐ 818 ☐ 819 ☐ 820 ☐ 821 ☐ 822 ☐ 823 ☐ 824 ☐ 825 ☐ 826 ☐ 827 ☐ 828 ☐ 829 ☐ 830 ☐ 831 ☐ 832 ☐ 833 ☐ 834 ☐ 835 ☐ 836 ☐ 837 ☐ 838 ☐ 839 ☐ 840 ☐ 841 ☐ 842 ☐ 843 ☐ 844 ☐ 845 ☐ 846 ☐ 847 ☐ 848 ☐ 849 ☐ 850 ☐ 851 ☐ 852 ☐ 853 ☐ 854 ☐ 855 ☐ 856 ☐ 857 ☐ 858 ☐ 859 ☐ 860 ☐ 861 ☐ 862 ☐ 863 ☐ 864 ☐ 865 ☐ 866 ☐ 867 ☐ 868 ☐ 869 ☐ 870 ☐ 871 ☐ 872 ☐ 873 ☐ 874 ☐ 875 ☐ 876 ☐ 877 ☐ 878 ☐ 879 ☐ 880 ☐ 881 ☐ 882 ☐ 883 ☐ 884 ☐ 885 ☐ 886 ☐ 887 ☐ 888 ☐ 889 ☐ 890 ☐ 891 ☐ 892 ☐ 893 ☐ 894 ☐ 895 ☐ 896 ☐ 897 ☐ 898 ☐ 899 ☐ 900 ☐ 901 ☐ 902 ☐ 903 ☐ 904 ☐ 905 ☐ 906 ☐ 907 ☐ 908 ☐ 909 ☐ 910 ☐ 911 ☐ 912 ☐ 913 ☐ 914 ☐ 915 ☐ 916 ☐ 917 ☐ 918 ☐ 919 ☐ 920 ☐ 921 ☐ 922 ☐ 923 ☐ 924 ☐ 925 ☐ 926 ☐ 927 ☐ 928 ☐ 929 ☐ 930 ☐ 931 ☐ 932 ☐ 933 ☐ 934 ☐ 935 ☐ 936 ☐ 937 ☐ 938 ☐ 939 ☐ 940 ☐ 941 ☐ 942 ☐ 943 ☐ 944 ☐ 945 ☐ 946 ☐ 947 ☐ 948 ☐ 949 ☐ 950 ☐ 951 ☐ 952 ☐ 953 ☐ 954 ☐ 955 ☐ 956 ☐ 957 ☐ 958 ☐ 959 ☐ 960 ☐ 961 ☐ 962 ☐ 963 ☐ 964 ☐ 965 ☐ 966 ☐ 967 ☐ 968 ☐ 969 ☐ 970 ☐ 971 ☐ 972 ☐ 973 ☐ 974 ☐ 975 ☐ 976 ☐ 977 ☐ 978 ☐ 979 ☐ 980 ☐ 981 ☐ 982 ☐ 983 ☐ 984 ☐ 985 ☐ 986 ☐ 987 ☐ 988 ☐ 989 ☐ 990 ☐ 991 ☐ 992 ☐ 993 ☐ 994 ☐ 995 ☐ 996 ☐ 997 ☐ 998 ☐ 999 ☐ 1000 ☐ 1001 ☐ 1002 ☐ 1003 ☐ 1004 ☐ 1005 ☐ 1006 ☐ 1007 ☐ 1008 ☐ 1009 ☐ 1010 ☐ 1011 ☐ 1012 ☐ 1013 ☐ 1014 ☐ 1015 ☐ 1016 ☐ 1017 ☐ 1018 ☐ 1019 ☐ 1020 ☐ 1021 ☐ 1022 ☐ 1023 ☐ 1024 ☐ 1025 ☐ 1026 ☐ 1027 ☐ 1028 ☐ 1029 ☐ 1030 ☐ 1031 ☐ 1032 ☐ 1033 ☐ 1034 ☐ 1035 ☐ 1036 ☐ 1037 ☐ 1038 ☐ 1039 ☐ 1040 ☐ 1041 ☐ 1042 ☐ 1043 ☐ 1044 ☐ 1045 ☐ 1046 ☐ 1047 ☐ 1048 ☐ 1049 ☐ 1050 ☐ 1051 ☐ 1052 ☐ 1053 ☐ 1054 ☐ 1055 ☐ 1056 ☐ 1057 ☐ 1058 ☐ 1059 ☐ 1060 ☐ 1061 ☐ 1062 ☐ 1063 ☐ 1064 ☐ 1065 ☐ 1066 ☐ 1067 ☐ 1068 ☐ 1069 ☐ 1070 ☐ 1071 ☐ 1072 ☐ 1073 ☐ 1074 ☐ 1075 ☐ 1076 ☐ 1077 ☐ 1078 ☐ 1079 ☐ 1080 ☐ 1081 ☐ 1082 ☐ 1083 ☐ 1084 ☐ 1085 ☐ 1086 ☐ 1087 ☐ 1088 ☐ 1089 ☐ 1090 ☐ 1091 ☐ 1092 ☐ 1093 ☐ 1094 ☐ 1095 ☐ 1096 ☐ 1097 ☐ 1098 ☐ 1099 ☐ 1100 ☐ 1101 ☐ 1102 ☐ 1103 ☐ 1104 ☐ 1105 ☐ 1106 ☐ 1107 ☐ 1108 ☐ 1109 ☐ 1110 ☐ 1111 ☐ 1112 ☐ 1113 ☐ 1114 ☐ 1115 ☐ 1116 ☐ 1117 ☐ 1118 ☐ 1119 ☐ 1120 ☐ 1121 ☐ 1122 ☐ 1123 ☐ 1124 ☐ 1125 ☐ 1126 ☐ 1127 ☐ 1128 ☐ 1129 ☐ 1130 ☐ 1131 ☐ 1132 ☐ 1133 ☐ 1134 ☐ 1135 ☐ 1136 ☐ 1137 ☐ 1138 ☐ 1139 ☐ 1140 ☐ 1141 ☐ 1142 ☐ 1143 ☐ 1144 ☐ 1145 ☐ 1146 ☐ 1147 ☐ 1148 ☐ 1149 ☐ 1150 ☐ 1151 ☐ 1152 ☐ 1153 ☐ 1154 ☐ 1155 ☐ 1156 ☐ 1157 ☐ 1158 ☐ 1159 ☐ 1160 ☐ 1161

3170N 15V12 8 6TVJ15W1

27001

CALL PLACE DATE & TIME

[illegible]

SUBJECT TO HOURS OF BARTNICK?	☒ Y	☐ N	☐ N	☐ YES
SUPERVISOR	G	P	D	
JOB CODE	D	F	E	X
HOURS OF SERVICE TITLE	C	O	N	D
PAY CLAIM	0	0	3	0
OVERTIME CLAIM	0	8	3	0
PAY CLASS	C	O	N	D
S CODE	T			

Callagret Marshall, 1414 W. 5th St. / Engine, Export to Canada / Det. 10 Records / (Per text)

INSTRUCTIONS			
1)	FIRST NAME OF DUTY	2)	REGISTRY NUMBER OF SERVICE
3)	LAST NAME OF DUTY	4)	REGISTRY NUMBER OF SERVICE
5)	DATE	6)	TIME
7)	DATE	8)	TIME

REGULAR HOURS		OVERTIME HOURS		SUPERVISOR INITIAL	
Hour	Minute	Hour	Minute		
 	 	 	 	P	Y
 	 	8	30		

FORWARDED FOR INFORMATION TO J. C. BARNES AT A TWO HOUR END SWEET/TV AIRING MON. 3

SECRETARY

[illegible]

TIME	DATE HANDLED	STATION	MP.	NR
11:30	10	3	10	10
11:45	10	10	10	10
12:15	10	10	10	10
12:30	10	10	10	10
12:45	10	10	10	10
13:00	10	10	10	10
13:15	10	10	10	10
13:30	10	10	10	10
13:45	10	10	10	10
14:00	10	10	10	10
14:15	10	10	10	10
14:30	10	10	10	10
14:45	10	10	10	10
15:00	10	10	10	10
15:15	10	10	10	10
15:30	10	10	10	10
15:45	10	10	10	10
16:00	10	10	10	10
16:15	10	10	10	10
16:30	10	10	10	10
16:45	10	10	10	10
17:00	10	10	10	10
17:15	10	10	10	10
17:30	10	10	10	10
17:45	10	10	10	10
18:00	10	10	10	10
18:15	10	10	10	10
18:30	10	10	10	10
18:45	10	10	10	10
19:00	10	10	10	10
19:15	10	10	10	10
19:30	10	10	10	10
19:45	10	10	10	10
20:00	10	10	10	10
20:15	10	10	10	10
20:30	10	10	10	10
20:45	10	10	10	10
21:00	10	10	10	10
21:15	10	10	10	10
21:30	10	10	10	10
21:45	10	10	10	10
22:00	10	10	10	10
22:15	10	10	10	10
22:30	10	10	10	10
22:45	10	10	10	10
23:00	10	10	10	10
23:15	10	10	10	10
23:30	10	10	10	10
23:45	10	10	10	10
24:00	10	10	10	10

EMPLOYEE SIGNATURE 	APPROVING SIGNATURE 
---	--

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report[illegible]

WRITTEN DESCRIPTION OF WORK BY NUMBER.

Below to mp SP.1. Train to DP, spot DP, Train to NA
1st to spot Schubert², spot Schubert, Train to DP.

INSTRUCTIONS

A) Complete Column 1 and Column 2 up to hours of service

B) Complete column 3 and 4 ONLY hours of service

C) Complete Column 1, 2, 3 and 4 if training for service

D) If hours of service are split between two vehicles,

[illegible]

COMPLETE ALL ITEMS BELOW ON ONE IF SUBJECT TO AGENCY OF SERVICE

NOVEMBER 1964

[illegible]

FRAGMENTS REPORT	STATOK	MP.	BT	CASES INCLUDED			TIME	
				T	E	Spent	Left	
	OK - 20	OK - 50				OK 30	OK 20	
	20 - 20	20 - 20		10		OK 20	OK 10	
	20 - NA	20 - NA		18		OK 25	OK 15	
	20 - 20	20 - 20		3		OK 15	OK 10	

11250
DATE: 11/25/00
TIME: 11:25
BY: 11250

Station	Minute
11	05

ACTUAL TIME YOU'D
HIS OF SERVICE DUTY

	House	Military
--	-------	----------

EMPLOYEE SIGNATURE *Larry R. Hook*

APPROVING SIGNATURE *D. J. Allen*

DATE	9-28-01
TIME	04:25 PM

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report

INITIALS & LAST NAME

32 J. J. T. R. V. I. S.

TIME

DEFINANCE

LOCAL FLIGHT DATE & TIME

DEFINANCE

TIME

DEFINANCE

SUBJECT TO CLASS OF SERVICE

1) Y
2) Y
3) Y

SUPERVISOR

G. P. B.

YOU CODE

D. F. M. B.

HOURS OF SERVICE TIME

C. B. M.

PAYROLL

11130

OVERTIME/CLASS

11130

PAYROLL

C. C. A. S.

RECORD

7

WRITE DESCRIPTION OF WORK BY NUMBER: Drive to Ceech, Train to Ceech, NS Interchange, Pull NS, Train to Ceech, 5:00 PM to 7:00 PM, Ceech, Train to Ceech

1) FIRST NAME

DATE 7-5-01

2) LAST NAME

TIME 0630

3) DEPARTMENT

TIME 0630

4) CLASS OF SERVICE

TIME 0630

5) CLASS OF SERVICE

TIME 0630

6) CLASS OF SERVICE

TIME 0630

7) CLASS OF SERVICE

TIME 0630

8) CLASS OF SERVICE

TIME 0630

9) CLASS OF SERVICE

TIME 0630

10) CLASS OF SERVICE

TIME 0630

11) CLASS OF SERVICE

TIME 0630

12) CLASS OF SERVICE

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13) CLASS OF SERVICE

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14) CLASS OF SERVICE

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15) CLASS OF SERVICE

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16) CLASS OF SERVICE

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129) CLASS OF SERVICE

TIME 0630

130) CLASS OF SERVICE

TIME 0630

131) CLASS OF SERVICE

TIME 0630

132) CLASS OF SERVICE

TIME 0630

2017-25V1 & 25W1

[illegible]

SUBJECT TO REB OF SERVICE?	REPORTER	JOB AND	HOURS OF SERVICE: FLAG	PAY DRAIN	OVERTIME CALL#	PAY CLASS	SCORE
	☐ YES ☐ NO			Hours Minutes	Hours Minutes		
(1)	☒	K P B	D E N A	C O R D		C 0 2 6	7
(2)	☐						
(3)	☐						

[illegible]

	1) FIRST NAME AND DUTY	2) BIRTH DATE AND OF SERVICE	3) OFF DUTY AND OF SERVICE	4) HIGH RELEASE ALLIANCE	5) HIGH RELEASE ALLIANCE
NAME					
NAME					
NAME					

OFFICE RECORD									
REGULARITY		OVERTIME HOURS		SUPERVISOR INITIAL					
12us	Mins	12us	mins						
10	30								

[illegible]

RECEIVED ALL NEWS BELONGS ONLY TO MEMBERS OF SERVICE

[illegible]

EMPLOYEE SIGNATURE	EMPLOYER SIGNATURE
	DATE
	7-18-01
	DATE
	7-19-01

07/21/01 07:51 FAX 7658250453

C&NC RAILROAD

01

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report[illegible]

pull extra 3000 to spot 19 Marville, Deliver 4 pull extra, back yard, drill west ground,
The up dead. Drive to DE

INSTRUCTIONS				
1) FIRST NAME (NUITY)	2) BEGINNING HR. OF SERVICE	3) CEPTURE HR. OF SERVICE	4) FILE NUMBER ALLIANCE	5) COMPLETE COLUMN 1 AND THE SUBJECTS OF SERVICE
PLACE	DATE	TIME		

[illegible]

CONSISTE OF ITEMS BELOW ONLY IS SUBJECT TO HOURS OF SERVICE

RUSSIAN

DATE REPORT		LOCATION	STOP	START	CAUSE
DATE & REFERENCE					

[illegible]

1	3	3	0
1001	1002	1003	1004

1	0	0	0
Hour	Minute	Second	Fraction

1	4	0	0	0
Total Pages				

DATE	7-20-01
DATE	7-11-01

EMPLOYEE SIGNATURE

ARTWORK SIGNATURE

SPINON:RG GGL:ATURE

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report[illegible]

RECEIVED DESERTECHNICAL CENTER
PULGUE SOFT GRANULES, Delivered CSXT, Thru to Local Pick up Cars off-
Market, Put-up Sipsack Cars thru to DE, Pail Menulle, Delivered to CSXT.
①

	1) FIRST NAME LAST NAME	2) URBANITY TOWN OF RESIDENCE	3) COUNTRY NHS OF SERVICE	4) FINAL RELEASE ALL DATA	5) SECURITY CODE
NAME		DE 1-23-01	DE 7-23-01		1
DATE		0630	1630		2
TIME					3

RESULTS		OVERTIME HOURS		SUPPORTING	
Hours	Minutes	Hours	Minutes	Hours	Minutes
1	00	0	00	0	00

[illegible]

EX-117-175 DEL CAYOULT 12 SUDANESE TO 100000 OF SERVICE

LEONARD M. HARRIS

[illegible]

QUALIFIER SIGNATURE	DATE
<i>[Signature]</i>	7-23-01
APPROVED SIGNATURE	DATE
<i>[Signature]</i>	7-24-01

MAUMEE & WESTERN RAILROAD CORPORATION Time Return & Delay Report

INITIALS LAST NAME

WJ TRAVIS

NOV 22

DE

PERM

DEF 1 AND E

CAL PLEASURE TIME

0H

Mo D Yr

10 08 01

Hours

0630

IN SELECT 13 HOURS OF SERVICE

1) 1H
2) 0H
3) 0H

SUPERVISOR

JUS

JOB CODE

DFWB

INCIDENT OF SERVICE TITLE

COND

PAY CLASS

1000

OVERTIME CLAIM

0H

PAY CLASS

COND

S CODE

7

WRITTEN DESCRIPTION OF WORK BY NUMBER: Gas Truck, Drive to WB, Pull NS, Transfer to Coal, Drop Cars off X
Pick up older cars, Transfer to DE, Pick up West bound, Tie Down at Pension Crossing

1) FIRST VIEW

ON DUTY

2) SECOND VIEW

HRD OF SERVICE

3) OFF DUTY

HRD OF SERVICE

4) FINAL RELEASE

ALL DUTY

PLACE

DATE

TIME

DF

10-02-01

0630

DF

10-02-01

0630

DF

10-02-01

1630

INSTRUCTIONS	
A)	Complete Column 1 and 2 if not subject to hours of service
B)	Complete Column 3 and 4 if only hours of service
C)	Complete Column 1, 2, 3 and 4 if both hours of service
D)	If hours of service are not submitted, check (X)

OT/REGULAR ONLY

LENGTH OF TIME DUTY

13300

Hours

13300

ACTUAL HRS NORMED

10000

Hours

10000

INCLUDING OVERTIME

10000

Hours

10000

CHIEF/HEAD

10000

Hours

10000

EMPLOYEE SIGNATURE

APPROVING SIGNATURE

[Signature]

[Signature]

TRACKAGE REPORT

FT	STATION	ME	PH	CART/MANDED	TIME
				L	S
					End
					Finish

COMPLETE ALL ITEMS BELOW ONLY IF SUBJECT TO HOURS OF SERVICE

LOCATING REPORT

UNIT & JOB CODE	LOC	LOC	LOC	LOC	LOC

DELAY REPORT

LOC	LOC	LOC	LOC	LOC	LOC

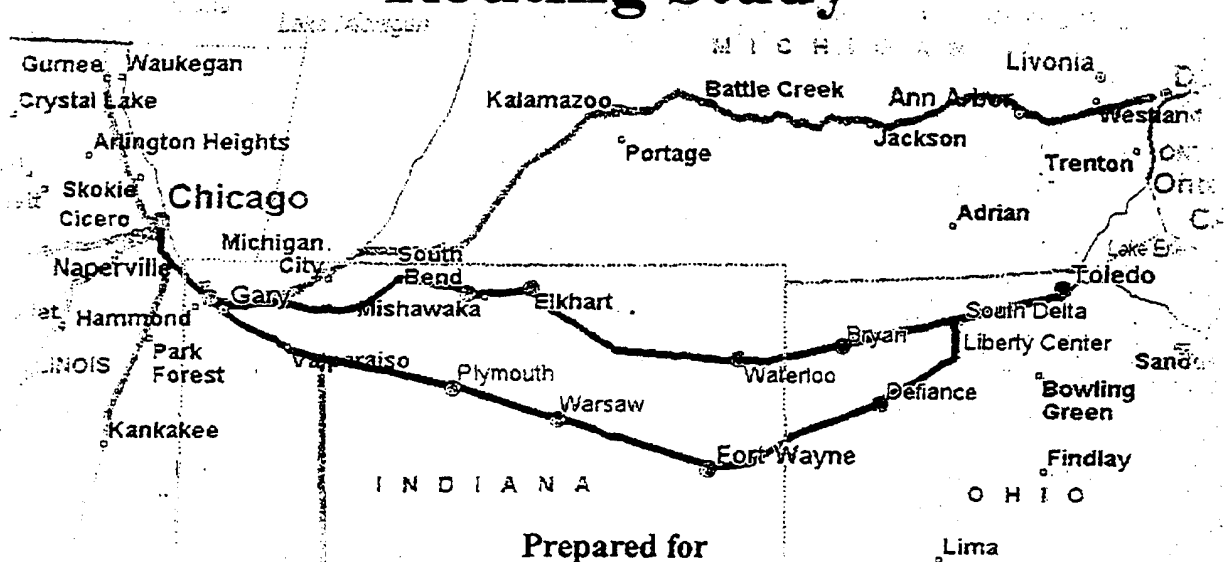
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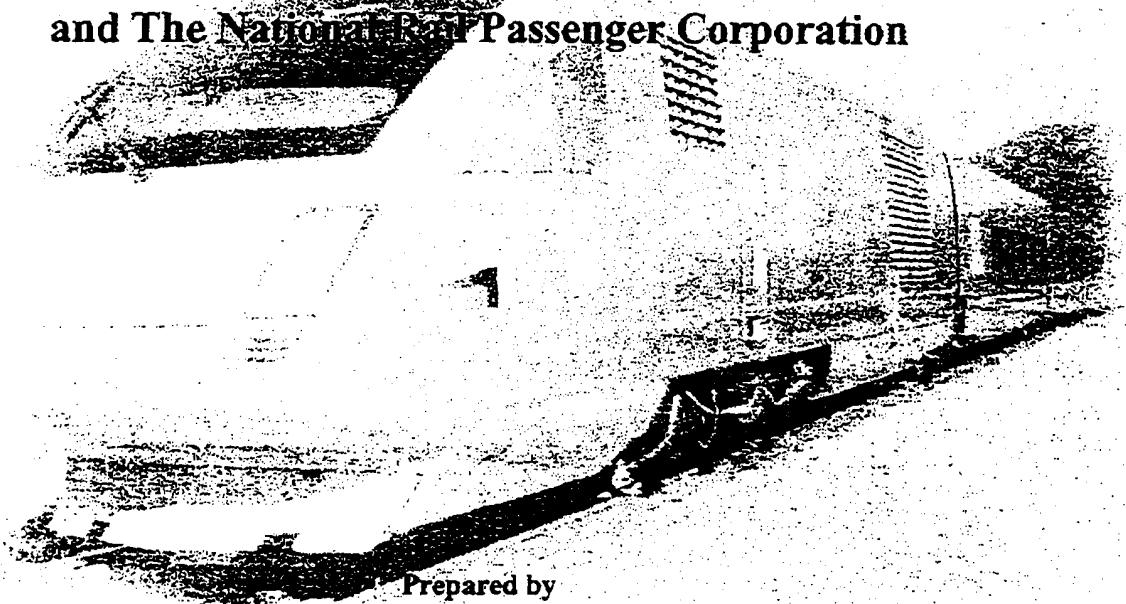
10-20-01

10-22-01

Northern Indiana/Northwestern Ohio Routing Study



Prepared for
Indiana Department of Transportation,
Ohio Rail Development Commission,
and The National Rail Passenger Corporation



Prepared by

TEMS

Transportation Economics & Management Systems, Inc.

116 Record Street • Frederick, MD 21701

301.846.0700 • fax 301.846.0740

in association with

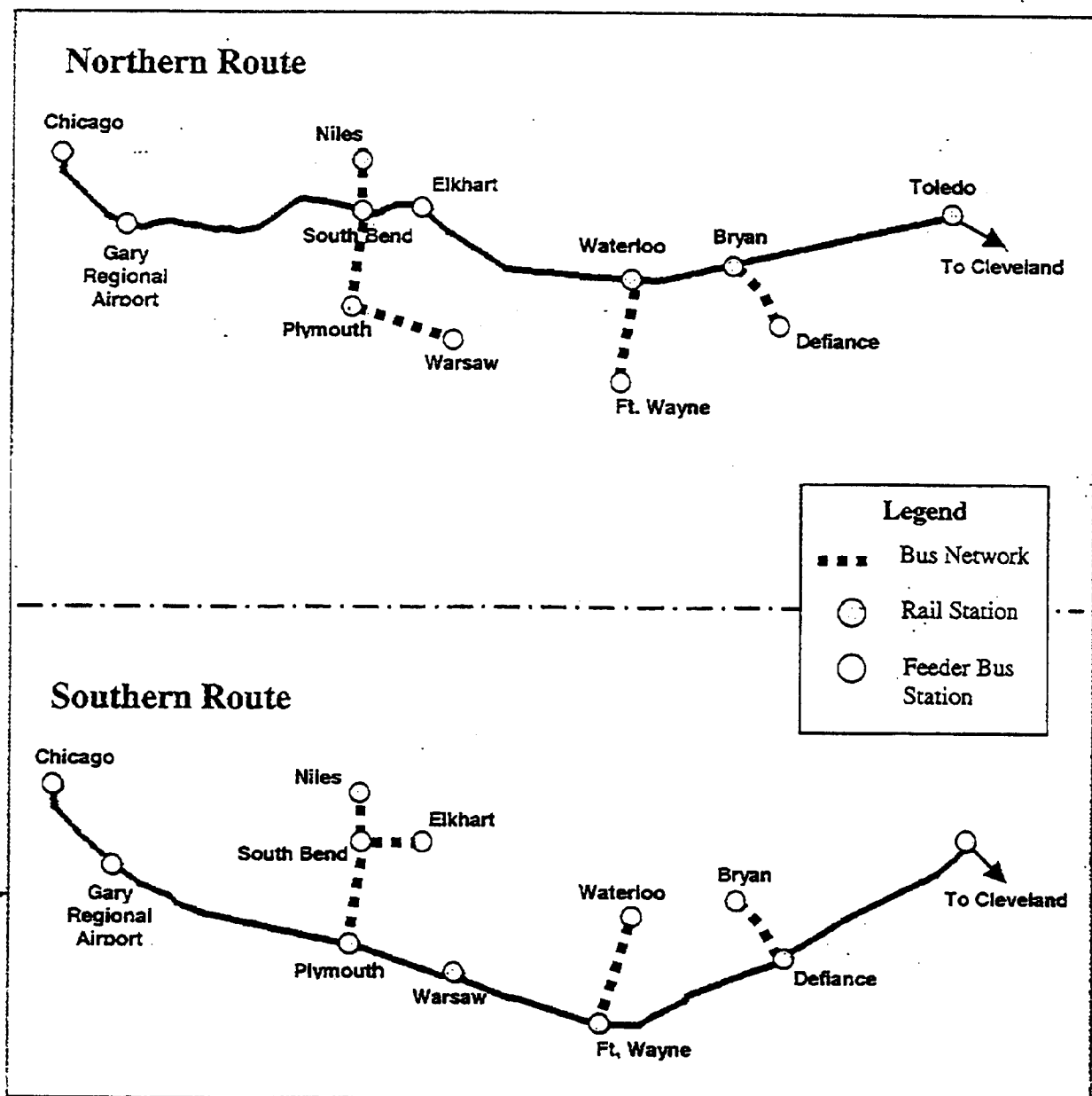
HNTB

November 2002

the timing of the development of the system will depend on the rate at which funding programs become available.

The capital costs, operating expenses and revenues were estimated for both routes using MWRI analysis methods for the 2013-2042 period, which corresponds to the 30-year life-cycle horizon of the project. To ensure an equal comparison of both routes, service levels for each were made the same. In other words, the operating strategies that were created for the alternatives have equal frequency and similar local and express stopping patterns. A system of express feeder buses was added to provide MWRI service to towns not served directly by the rail system. The express feeder systems were made as mirror images of each other (See Exhibit 2).

Exhibit 2: Proposed Bus Feeder Routes



proposed in this second alternative reduces the travel time from South Bend to Chicago from approximately 2:30 (current) to 2:00 (express service).

Exhibit 4: Cost-Benefit Analysis for the 2013-2042 period

30-Year Net Present Value (in Millions of 2002\$)			
Parameter	Northern Route	Southern Route	
		Without Express NICTD	With Express NICTD
Benefits			
Revenue	\$1,045.57	\$1,169.96	\$1,198.88
Consumer Surplus	\$1,003.85	\$1,235.59	\$1,240.14
Other Mode User Benefits			
Airport Congestion	\$40.70	\$49.08	\$49.08
Highway Congestion	\$70.21	\$94.95	\$96.59
Resources Benefits			
Airlines	\$21.89	\$26.40	\$26.40
Emissions	\$1.38	\$1.65	\$1.67
Total Benefits	\$2,183.59	\$2,577.63	\$2,612.76
Total Costs*	\$2,373.43	\$2,040.73	\$2,134.99
Ratio of Benefits to Costs	0.92	1.26	1.22

* Un-negotiated costs that show relative magnitude but may not show final dollar figures.

Recommendations

The analysis shows that in financial and economic terms, the Southern Route will be more beneficial than the Northern Route. Given its stronger financial and economic performance, the Southern Route is the most cost efficient alternative. It is important to recognize that much of the benefit of the Northern Route is captured by providing express NICTD service to South Bend as part of the Southern Route buildout. This combination maximizes the benefits to travelers in Northern Indiana, Northwest Ohio and across the whole of the MWRRI system, and therefore, the "Southern Route with Express NICTD" is the routing plan recommended by this study.

By proceeding with development of the Southern Route, new direct rail passenger service can be restored to Fort Wayne on the more cost-effective of the two routes while the existing NICTD service to South Bend can be enhanced to ensure continued quality passenger rail service for that community. Direct rail access will be available from South Bend to downtown Chicago, with an additional express stop near the Gary/Chicago Airport where passengers can access high-speed trains to Indianapolis and the western MWRRI states. In addition, express bus service to Niles, MI, and Plymouth, IN, will allow South Bend area rail passengers to access high-speed trains to Cleveland, Detroit and points east. The Southern routing, with lower construction costs and faster travel times, is also beneficial to travelers in Toledo and Cleveland as well as other areas in the Midwest.

Exhibit 5-2: Ridership and Revenue Forecast Summary

Year	Ridership (Annual Trips)		Fare Box Revenue (Millions of 2002\$)		Yield Per Passenger Mile (2002\$ per mile)	
	Northern Route	Southern Route	Northern Route	Southern Route	Northern Route	Southern Route
2010 (Phase 4)	741,266	866,859	\$44.540	\$49.770	0.27	0.23
2011 (Phase 5)	795,877	931,156	\$46.780	\$52.303	0.27	0.23
2012 (Phase 6)	821,621	961,687	\$47.950	\$53.627	0.26	0.23
2015*	854,354	1,001,252	\$49.830	\$55.748	0.26	0.23
2020*	908,907	1,067,194	\$52.950	\$59.284	0.26	0.23
2023*	949,256	1,114,517	\$55.284	\$61.885	0.26	0.23
2033*	1,083,756	1,272,259	\$63.842	\$70.553	0.27	0.22
2040*	1,117,905	1,382,679	\$68.520	\$76.621	0.26	0.22
2042*	1,205,262	1,414,585	\$70.102	\$78.396	0.26	0.22

*MWRR system fully implemented

The ridership estimate from the *COMPASS*[®] model also generated station volumes in the corridor – as illustrated in Exhibits 5-3 and 5-4. The station volumes that are calculated here refer to the annual boardings and alightings at the specific rail stations along the corridor. An analysis of the station volumes on the Southern Route shows that significant ridership comes from the stop in Ft. Wayne, Indiana. Additionally, Exhibit 5-3 shows that the Southern Route benefits from the reduced travel time along the corridor. More specifically, the decrease in travel time on the Southern Route increases the station volumes to Toledo and stations to the east (i.e., Sandusky, Elyria and Cleveland).

Exhibit 5-3: Annual Station Volumes by Trip Purpose (Southern Route, 2020)

Stations	Business	Non-Business	Total
Gary/Hammond-Whiting *	22,593	66,680	89,273
Plymouth	7,454	42,258	49,712
Warsaw	4,223	24,023	28,246
Ft. Wayne	48,491	95,884	144,375
Defiance	8,039	39,212	47,251
Toledo	53,320	201,520	254,840
Sandusky	6,230	33,666	39,896
Elyria	6,838	51,638	58,476
Cleveland	80,071	313,368	393,439

* Gary/Hammond-Whiting Station shared by multiple corridors therefore all station volumes cannot be attributed to Chicago-Cleveland corridor.

6. Total Costs

There are two cost considerations when evaluating alternative service levels. The first is a fixed capital investment in infrastructure and rolling stock, which will be incurred during construction as up-front costs. The second is the ongoing variable and fixed costs of operations. A discussion of these cost issues is presented below.

6.1 Capital Investment Costs

The capital costs associated with passenger rail corridor development have two major components: infrastructure and rolling stock costs. The infrastructure cost items for both the Southern Route and the Norfolk Southern Northern Route are described in detail in Chapter 2. Other capital investments include the purchase of track and Right-of-Way (R.O.W.) along the Southern Route between Tolleston and Ft. Wayne to allow passenger operations up to 110 mph.

6.1.1 Infrastructure Costs

Infrastructure costs represent the majority of all capital costs and vary with each alignment and section. To ensure a balanced comparison between northern and southern alignments, this study's infrastructure costs assessment encompasses the entire Chicago-Cleveland corridor for each and is broken down into segments outlined in Chapter 2. Exhibit 6-1 outlines the segments for each alignment and corresponding infrastructure costs required to fulfill the ultimate operating plan prepared for this project. A more detailed breakout of cost items by segment for both corridors is provided at the end of this report in Appendix C.

Exhibit 6-1: Infrastructure Costs, Chicago to Cleveland

Alignment and Segment	Total Cost
Northern Alignment	
Segment 1: Chicago to Porter*	\$170,000,000
Segment 2: Porter to IN/OH Line	\$601,623,000
Segment 3: IN/OH Line to Toledo	\$298,190,000
Segment 4: Toledo to Berea	\$337,013,000
Segment 5: Berea to Cleveland	\$142,749,000
Total	\$1,549,575,000
Southern Alignment	
Segment 1: Chicago to Tolleston*	\$98,000,000
Segment 2: Tolleston to Wanatah*	\$28,000,000
Segment 3: Wanatah to Mike Junction(Ft. Wayne)	\$174,521,000
Segment 4: Mike Junction (Ft. Wayne) to New Haven	\$45,643,000
Segment 5: New Haven to Liberty Center	\$211,122,000
Segment 6: Liberty Center to Delta	\$17,651,000
Segment 7: Delta to Toledo	\$131,577,000
Segment 8: Toledo to Berea	\$337,013,000
Segment 9: Berea to Cleveland	\$142,749,000
Total*	\$1,186,276,000
Does not include cost of ROW	
Note: Costs are in 2002 dollars.	
* Represents a portion of the segment's cost, as explained in Exhibit 6.2.	

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

VERIFIED STATEMENT OF WILBERT SNYDER

My name is Wilbert Snyder. I am a civil engineer with Michael Baker Corporation. I have been retained by Maumee & Western Railroad Company and RMW Ventures, LLC to provide engineering testimony in connection with the proposal advanced by CSX Transportation, Inc. in connection with its removal of the crossing diamonds at Defiance, Ohio. Before joining Michael Baker Corporation, I was Chief Engineer for the Pittsburgh & Lake Erie Railroad Company and in that capacity and in subsequent assignments with Michael Baker Corporation I have acquired extensive experience in connection with railroad track engineering projects and the construction of various railroad facilities including diamond crossings. I am also familiar with the maintenance of these facilities and costs associated therewith. A copy of my resume is attached as Exhibit A of this statement. I am authorized to make this verified statement in support of the rebuttal pleading filed by M&W and RMW in this docket.

In preparation for the submission of this verified statement, I reviewed the photographs of the diamond crossings taken by Mr. Wendelin and appended to the M&W/RMW petition which was filed with the Board on July 12, 2004. In addition, I have reviewed all documents produced by CSXT in this proceeding including those under confidential and highly confidential classifications. On September 14, 2005 I traveled to

Defiance, Ohio and inspected the track facilities of M&W and CSXT at the Defiance crossing. I have also examined the rail facilities which CSXT proposes to use to provide an alternative means for M&W to cross its double track main line. A track map depicting these rail facilities is attached as Exhibit B.

Based on my inspections and observations and my review of the CSXT documents, it is my professional opinion that CSXT failed to adequately maintain the crossing diamonds at Defiance when requested to do so by M&W. As a result of this lack of maintenance, CSXT permitted the diamonds and the adjacent track structures on the Maumee line to shift out of alignment and out of gauge. This is the result of the frequent, heavy rail volume and high speed with which CSXT operated through those diamonds. It is also apparent to me from CSXT internal documents that CSXT engineering officials unilaterally decided they did not wish to incur the increased costs of maintaining these crossing diamonds under such heavy use by CSXT and removed them, severing the M&W line in the process notwithstanding M&W objections.

I have also reviewed the internal CSXT documents in Petitioners' Document Appendix as well as the CSXT response to the M&W/RMW petition regarding proposed alternative crossing arrangements. Under the CSXT proposal, a M&W train approaching from west of Defiance would use a new connecting track through the southeast quadrant to pull on to # 2 CSXT track east of Jackson Street, and then use an existing No. 20 cross over to push onto the No. 1 CSXT track and push west to Atlantic Street and then pull east through the switch and onto the M&W-CSXT interchange track in the vicinity of M.P. 88 as depicted on Exhibit B. In my professional opinion, this alternative is operationally unworkable. The CSXT proposal does not provide for an alternative interchange location and the existing interchange track west of CSXT MP 88 cannot be

used both for interchange and for crossing purposes. If a cut of cars were set out on this interchange track by CSXT or M&W, that track would be blocked for crossing use by M&W. Since CSXT can not or will not guarantee a crossing window, CSXT's proposed use of the interchange track for crossing purposes will greatly increase operational complexities and coordination requirements for CSXT-M&W interchange and crossing operations. The CSXT proposal will require its main line dispatcher in Jacksonville, FL to coordinate with CSXT regional operating officials and the local train master in Defiance, Ohio to be sure that CSXT has not set out a block of cars for M&W on the interchange track. These officials will also have to confirm that M&W has not placed a block of cars for CSXT on the interchange track. At present I am advised that it takes 24 to 48 hours for CSXT to pick up cars which M&W has placed on this track for interchange to CSXT. Thus, CSXT's proposed dual use of the interchange track for both crossing movements and interchanges is fraught with delays, miscommunications and inefficiencies. By the time all the required coordination and communication has occurred, any 45 minute window for the actual crossing movement over CSXT's main line will have evaporated, particularly since CSXT is not willing or able to schedule crossing times or stop its trains.

CSXT would have to construct a second connecting track between CSXT No. 1 track and the M&W track just East of CSXT MP 88 to avoid dual use of the interchange track. (Exhibit B "Omitted Track") This cost is not included in the CSXT cost estimate. Moreover, the "omitted" connecting track from CSXT No. 1 main to the M&W line near MP88 and connecting track switch would also have to be integrated with the existing interlocking signal system and equipped with switch heaters for winter operations. There

is no documentation or projections for the cost of that signal interface or switch heaters in the CSXT cost projections contained in the documents produced by CSXT.

The alternate crossing movement is also potentially dangerous because it would require M&W engines to shove against a cut of cars through a crossover and over two at grade crossings (Jackson St. and Deatrick St.) onto the M&W track west of the Defiance crossing. Shoving cars over grade crossings will require M&W to employ addition trainmen to protect the public crossings when these shoving moves are being made. Alternatively, a M&W engine could run around its consist on the CSXT main lines to avoid shoving or pushing its train through these crossings and switches, but this would entail even longer occupancy and use of CSXT main line tracks.

The alternative crossing movement will also take much longer to accomplish than a direct crossing using the crossing diamonds. The estimated time to make this crossing movement with a 50 car train is 60 minutes and a 10 car train would be 45 minutes.¹ This includes the time required to throw and restore switches, start and stop the train three times and extensive coordination with the CSXT dispatcher, regional officials and local train masters. The M&W train has to travel 2.5 miles to make this move. A direct M&W train movement over the crossing diamonds covers a distance of $\frac{3}{4}$ of a mile and is expected to take 15 minutes. The CSXT line handles 50 to 80 trains per 24 hour period. With the CSXT crossing plan the M&W would find it very difficult to ever get enough

¹ The time to make the move was calculated as follows:

1. M&W contact CSX dispatcher to get electric lock for crossover released - 5 min.
 2. throw crossover switches -5 mins
 3. pull train west of east bound signal - 8 mins (assume 5 mph avg speed)
 4. restore cross over to normal position 5 mins
 5. contact CSX to reverse crossover from 1 to 2 Maintrack - 5 mins
 6. shove train east of west bound signal -12 min
 7. contact CSX to restore cross over to normal position and release electric lock switch to Maumee track- 5 mins
 8. pull train onto MW track - 12 min
 9. restore switch to normal position 5 min
- Total 57 minutes round to 60 mins; for 10 car train 45 mins)

time to cross CSXT unless CSXT is willing to stop their trains and guarantee scheduled time periods to make the crossing movements.

CSXT refusal to restore the crossing diamonds centers on two main objections: the CSXT reduction in speed from 60 mph to 40 mph and the 3 year diamond life and maintenance costs compared to the 12 year life of the switches and their reduced maintenance cost. CSXT documents indicate the CSXT predecessor Baltimore and Ohio Railroad operated over its crossing diamonds at speeds up to 80 mph. in 1948 but this would have involved lighter equipment. However, there have also been recent improvements in materials and design that increase the speed characteristics and life of crossing diamonds by using bainitic steel diamonds with today's heavy axle loadings. In actual test use monitored by TTCI on the CN-IC/TP&W mainline crossing at Gilman after 30 mgt/year of traffic at 40 m.p.h. speed restriction, the bainitic diamond is projected to outlive the pearlitic diamonds by a factor of two to three times. At Salem, Ill, where UP and CSXT cross, traffic on the UP line was approximately 40 mgt/year and the CSXT line was approximated 25 mgt/year. The trains of both railroads cross the diamond at 40 m.p.h. This diamond was installed on July 1999 and had accumulated about 120 mgt. as of July 2001. Performance of these diamonds in 2002 continued to show promising results and these crossing diamonds have required significantly less initial maintenance. See "An Update on Revenue Service Tests of Bainitic Steel Rail Crossing Diamonds," Railway Track and Structures, Jan. 2003, David D. Davis, Senior Principal Engineer, Transportation Technology Center, Inc. Evaluations by TCII of flange-bearing- frog crossing diamonds at TCII Facility for Accelerated Testing have shown that eliminating the unsupported flangeway gap from the running surface of high-angle crossings can reduce dynamic loads from 3 to 5 times static wheel load to 1.5 times

static wheel load at 40 m.p.h. "Can Diamonds be Forever" Railway Age August 2003, David D. Davis. Heavy axle load traffic with the introduction of 286,000 pound cars has accelerated industry research efforts to improve crossing diamond designs and durability. "Heavy-Haul Hammer Tests", Railway Age, April 2003, Tom Judge. However, most industry testing of improved crossing diamonds has been conducted at train speeds of approximately 40 m.p.h. Thus, CSXT's expectation that it should be able to operate over the Defiance crossings at speeds in excess of 40 m.p.h. without increased maintenance expense is unrealistic given the current state of track technology and research on crossing diamonds. Recent improvements in crossing diamond life have not eliminated all problems, but, railroads do have options which can now significantly improve diamond life and reduce maintenance costs.

In conclusion my review of the CSXT internal documents and cost projections, indicates that CSXT has attempted to cost justify a crossing alternative which would also impose the greatest operational impediments to M&W rail service west of the Defiance crossing at the lowest cost to CSXT. The CSXT's internal engineering cost projections are little more than preliminary estimates and are superficial and incomplete. In developing these projections, CSXT engineers omitted cost factors for essential crossing components which are integral to the CSXT proposed alternative: a crossover from No.1 CSXT to M&W, integration of all new switches into the signal system, and switch heaters for winter operations on all the new switches. The CSXT alternative crossing would require the installation of a main line switch and connecting track and one additional crossover and two switch heater installations at a cost of approximately \$425,000 as well as the integration of these switches into the signal interlocking system at Defiance at a cost of \$ 200,000. Thus, a properly conceived and constructed CSXT

alternative crossing is actually more expensive than would be the simple restoration and maintenance of the diamond crossings.

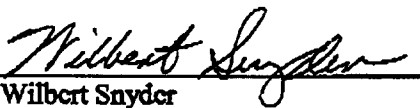
CSXT has also stated that the M&W track has to be upgrade to FRA Class 1 standard before they will restore the crossing. M&W currently operates in compliance with FRA Track safety standards for excepted track and will continue to do so in the future. In my opinion, there is simply no engineering, operational or safety reason for such a condition and CSXT should not be permitted to impose this condition on M&W.

Accordingly, it is my opinion that the lowest cost, safest and most efficient means for M&W and CSXT to cross each other's lines, is for CSXT to reinstall and maintain the diamond crossings which they removed in 2002. Those diamonds were installed solely to benefit the CSXT crossing of the M&W railroad line and to facilitate CSXT operations over the M&W line in the wake of the Conrail acquisition. In such circumstances the carrier benefited by those facilities should bear the cost of constructing and maintaining them. Furthermore, if any costs with respect to the reconstruction or maintenance of the double diamond crossing are to be allocated between the parties, that allocation should be on a percentage of car load use which would most fairly reflect the extensive and intensive utilization of those diamond crossing facilities by CSXT.

VERIFICATION

I, Wilbert Snyder, under penalty of perjury state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing Verified Statement.

Executed on November 22, 2005.


Wilbert Snyder

Wilbert E. Snyder, P.E.

Senior Engineer

General Qualifications

Mr. Snyder brings the expertise of 21 years of service on the Pittsburgh and Lake Erie Railroad and its affiliates in engineering and maintenance positions including Chief Engineer, Chief of Engineering Services, and Maintenance-of-Way Engineer. Mr. Snyder has been involved in new railroad track location designs, inspection and evaluation of existing trackage and relocation designs for existing railroad tracks.

Experience

Allegheny Valley Passenger Rail Feasibility Study, Allegheny and Westmoreland Counties, Pennsylvania. Southwestern Pennsylvania Commission. Project Manager. Responsible for the inspection and evaluation of 23 miles of track and 60 grade crossings. Developed detailed capital cost estimates to eliminate slow orders and increase operating speed to 50 MPH for commuter train service. Provided recommendation and cost estimates on grade crossing improvements and consolidations.

Conrail Mon Line Double Track, Pittsburgh, Pennsylvania. Golder Associates. Senior Engineer. Performed preliminary and final track design for double track project with 3.8 miles of second main track added to the existing corridor.

Green Line Rehabilitation, Chicago, Illinois. Chicago Transit Authority. Senior Engineer. Prepared preliminary design for temporary shoofly tracks for construction of a new underpass of C&NW three track system and CTA double-track system at Marion Avenue.

Green Line Rehabilitation, Chicago, Illinois. Chicago Transit Authority. Senior Engineer. Prepared final design for track relocations for the stations at Marion Street and Austin Boulevard.

CUY-77-11.11 Replacement of CSX Railroad Bridge over I-77, Ohio. Ohio Department of Transportation. Project Engineer. Responsible for design of temporary and permanent alignment for CSX main tracks and Marcy yard. Special design considerations include maintaining over 50 trains per day on CSX mainline and maintaining full access to CSX Marcy yard on the east side of the bridge.

Airport Busway/Wabash HOV Facility, Pittsburgh, Pennsylvania. Port Authority of Allegheny County. Project Manager. Project Manager for Construction Phase Services for the AB6C Corliss Flyover Section. Responsible for processing technical submittals, the contractor's requests for information and assistance, and the preparation of as-built drawings.

Years with Baker: 11

Years with Other Firms: 21

Education

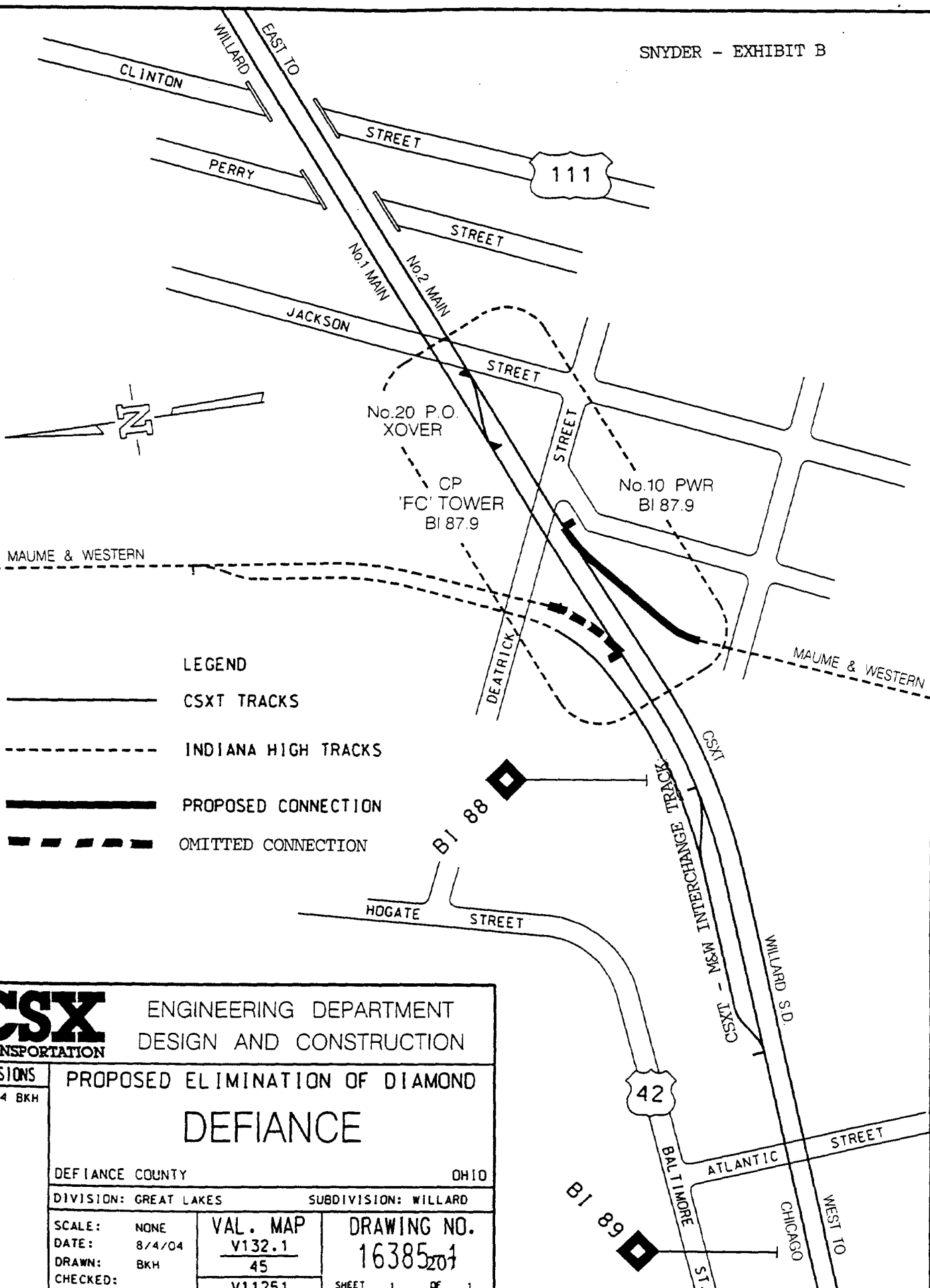
B.S., 1973, Civil Engineering,
University of Pittsburgh

Licenses/Certifications

Professional Engineer,
Pennsylvania, 1990, PE040016E

Professional Engineer, Ohio, 1993,
57498

SNYDER - EXHIBIT B



LEGEND

- CSXT TRACKS
- - - - INDIANA HIGH TRACKS
- PROPOSED CONNECTION
- - - - OMITTED CONNECTION



ENGINEERING DEPARTMENT
DESIGN AND CONSTRUCTION

REVISIONS

8/6/04 BKH

PROPOSED ELIMINATION OF DIAMOND
DEFIANCE

DEFIANCE COUNTY

OHIO

DIVISION: GREAT LAKES

SUBDIVISION: WILLARD

SCALE: NONE
DATE: 8/4/04
DRAWN: BKH
CHECKED:

VAL. MAP
V132.1
45
V11251

DRAWING NO.
16385201

SHEET 1 OF 1

CERTIFICATE OF SERVICE

Richard R. Wilson, Esq. hereby certifies that on this 25th day of November, 2005 he did serve a true and correct copy of the foregoing Legal Argument upon the following by first class mail, postage prepaid at the addresses set forth below:

Louis E. Gitomer, Esq.
BALL JANEK, LLP
1455 F. Street, N.W., Ste. 225
Washington, D.C. 20005

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