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212707

December 7, 2004

FILED

DEC - 7 2004

**SURFACE
TRANSPORTATION BOARD**

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

RE: Finance Docket No. 34629, *Indiana & Ohio Railway Company-Trackage
Rights-West Central Ohio Port Authority and Indiana & Ohio Central Railroad
Company*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7), a check covering the \$1,000.00 filing fee, 20 additional maps, along with file Notice of Exemption.doc on three 3.5-inch IBM-compatible floppy diskettes.

Please time and date stamp the extra copy of this letter and the Notice of Exemption and return it with our messenger.

If you have any questions, please call or email me.

Respectfully submitted,

Louis E. Gitomer

Enclosures

**ENTERED
Office of Proceedings**

DEC - 7 2004

**Part of
Public Record**

FEE RECEIVED

DEC - 7 2004

**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34629

INDIANA & OHIO RAILWAY COMPANY
—TRACKAGE RIGHTS—
WEST CENTRAL OHIO PORT AUTHORITY AND
INDIANA & OHIO CENTRAL RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION

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Public Record

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
INDIANA & OHIO RAILWAY COMPANY
5300 Broken Sound Boulevard, N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
Ball Janik LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
(202) 638-3307

Attorneys for:
INDIANA & OHIO RAILWAY COMPANY

Dated: December 7, 2004

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34629

INDIANA & OHIO RAILWAY COMPANY
—TRACKAGE RIGHTS—
WEST CENTRAL OHIO PORT AUTHORITY AND
INDIANA & OHIO CENTRAL RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION

The Indiana & Ohio Railway Company (“IORY”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for overhead trackage rights over certain rail lines operated by Indiana & Ohio Central Railroad, Inc. (“IOCR”) and owned by the West Central Ohio Port Authority (“WESTCO PA”).¹ The parties have entered

¹ IOCR currently operates over the rail line. IORY and IOCR are both subsidiaries of RailAmerica, Inc., and will coordinate operations over the rail line once IOCR begins operations pursuant to these trackage rights.

into a written agreement for the trackage rights (Exhibit B) which are not sought as a responsive application in a rail consolidation proceeding.

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), IORY submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

IORY is acquiring overhead trackage rights from IOCR on track owned by WESTCO PA and operated by IOCR between Springfield, Ohio, Milepost 202.7, and Fayne, Ohio, Milepost 229.83.

Name and address of tenant railroad:

Indiana & Ohio Railway Company
497 Circle Freeway Drive, Suite 230
Cincinnati, OH 45246

Questions and correspondence concerning this notice may be addressed to:

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
INDIANA & OHIO RAILWAY COMPANY
5300 Broken Sound Boulevard, N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after December 15, 2004.

(a)(1)(iii) Purpose Sought to be Accomplished

The involved trackage rights will enable IORY to enhance service for certain shippers and provide more efficient and economical routings and service for this traffic.

(a)(5) List of States in which the Party's Property is Situated

IORY operates in the States of Indiana, Ohio and Michigan. IOCR operates in the State

of Ohio. The involved trackage rights are located in the State of Ohio. WESTCO PA owns property in the State of Ohio.

(a)(6) Map

A map illustrating the involved trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the executed trackage rights agreement is attached as Exhibit B.

Labor Protection

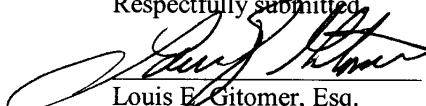
This trackage rights transaction involves two Class III railroads and a public agency.

Therefore, under 49 U.S.C. § 11326(c) since only Class III rail carriers are involved, no labor protection applies to the proposed transaction.

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,



Gary A. Laakso, Esq.
Vice President Regulatory Counsel
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COMPANY
5300 Broken Sound Boulevard, N.W.
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(202) 638-3307

Attorneys for:
INDIANA & OHIO RAILWAY COMPANY

Dated: December 7, 2004

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34629

INDIANA & OHIO RAILWAY COMPANY
—TRACKAGE RIGHTS—
WEST CENTRAL OHIO PORT AUTHORITY AND
INDIANA & OHIO CENTRAL RAILROAD, INC.

Indiana & Ohio Central Railroad, Inc. as operator and West Central Ohio Port Authority as owner, have agreed to grant overhead trackage rights to Indiana & Ohio Railway Company between, Milepost 202.7, near Springfield, OH, and Milepost 229.83, at Fayne, OH, a total distance of approximately 27.13 miles. The trackage rights will be effective on December 15, 2004.

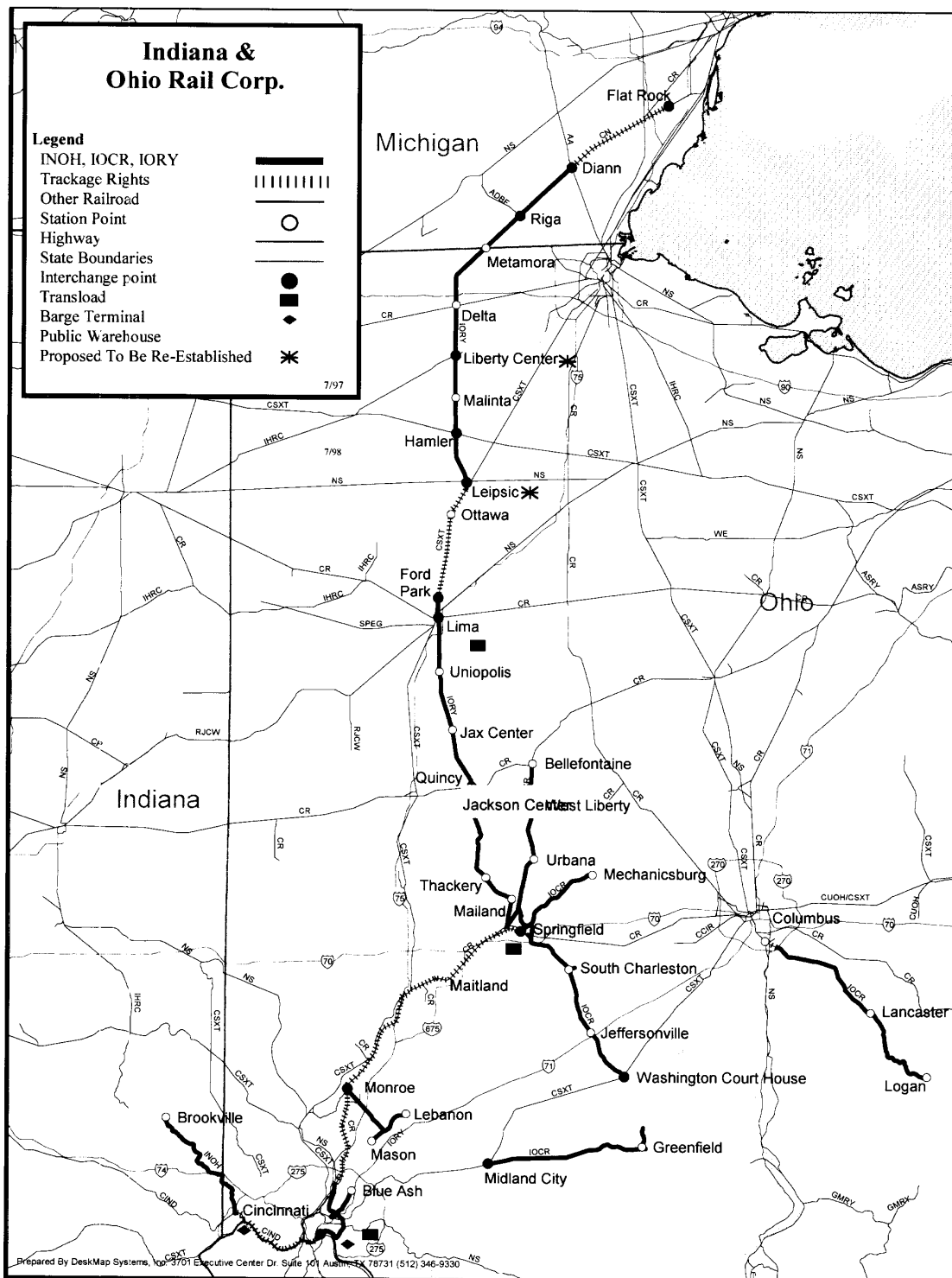
This Notice is filed under § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board.

Vernon A. Williams
Secretary

EXHIBIT A-MAP



TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT dated this 16th day of October, 2004, between the Indiana & Ohio Central Railroad (IOCR), and the Indiana & Ohio Rail Corp (IORY) relating to trackage rights grant over the Indiana & Ohio Central Railroad (IOCR) in Ohio between Springfield (M.P. 202.7) to Fayne (M.P. 229.83), hereinafter referred to as the Joint Trackage.

In consideration of the following mutual covenants and agreements the parties hereto hereby agree as follows:

ARTICLE 1. USE OF JOINT TRACKAGE

A) IOCR shall have exclusive control of the management and operation of the Joint Trackage.

B) IORY's use of the Joint Trackage shall be in common with IOCR and any other user of any portion of the Joint Trackage, and IOCR's right to use the Joint Trackage shall not be diminished by this Agreement. IOCR shall retain the right to grant to other persons rights of any nature in the Joint Trackage.

C) IORY may use any part of the Joint Trackage to haul freight cars, locomotives, or equipment while performing common carrier freight service. IORY shall not use the Joint Trackage for passenger operations without the prior written consent of IOCR.

ARTICLE 2. TRACKAGE RIGHTS FEES

A) For use of the Joint Trackage, IORY shall pay directly to West Central Ohio Port Authority (WESTCO PA), the owner of the line, the sum of twenty-nine cents (\$.29) per car mile for each car, empty or loaded, locomotive, caboose handled by IORY over the Joint Trackage pursuant to this Agreement. Locomotives will count as two cars. At the end of each month, IORY will furnish to WESTCO PA a statement of the number of cars (empty or loaded), locomotives, cabooses, and the total car miles operated by IORY over the Joint Trackage together with payment for use of the Joint Facilities. Payment is computed by multiplying the current trackage rights fee, as may be revised in accordance with Article 2 Section B hereof, by the number of cars and other railroad equipment listed above, by the number of miles of Joint Facilities used.

B) Adjustment to Trackage Rights Fees. The Trackage Rights Fees referred to in this Agreement shall be adjusted upward or downward on an annual basis, beginning January 1, 2006, by multiplying the current rate by an annual adjustment factor derived from the Rail Cost Adjustment Factor, Unadjusted for Productivity, (the "RCAF-U"). The annual adjustment factor will be derived by dividing the latest available 4th Quarter RCAF-U index by the 4th Quarter index for the corresponding quarter of the previous year as published on a quarterly basis by the Association of American Railroads (AAR). (Both index numbers will be calculated using the latest base available.) The resulting annual adjustment factor will be rounded to the third decimal place. The Trackage Rights Fee payment amounts in effect immediately prior to the annual update will then be multiplied by the annual adjustment factor to determine the amount(s) of the adjusted Trackage Rights payment amounts. Should the RCAF-U index be re-based, the re-based series will be used to calculate the annual adjustments. If the RCAF-U is discontinued, the parties will negotiate in good faith to agree upon a substitute provision. If no agreement is reached within 30 days after negotiations start, Westco or IORY may elect either (1) seek arbitration of a substitute index that most closely reflects

the factors considered by RCAF-U or (2) to substitute for the RCAF-U the Producer Price Index (Finished Goods) published by the U.S. Department of Labor.

ARTICLE 3. REHABILITATION AND MAINTENANCE OF JOINT TRACKAGE.

A) IOCR, for the term of this Agreement, will maintain, repair and renew the Joint Trackage, or any portion thereof, at its own cost, to F.R.A. Class II or such higher level and condition as IOCR, in its sole discretion, deems appropriate in conformity with the Shortline Railroad Agreement previously executed between WESTCO PA and IOCR.

B) IORY, for the term of this Agreement, may request IOCR to maintain the Joint Trackage, at IORY's sole cost, to any higher standard as IORY may request. Should IOCR agree to maintain the track to a higher standard such additional maintenance shall be performed by IOCR.

ARTICLE 4. MANAGEMENT AND OPERATION

A) IORY shall comply with the provisions of the Federal Boiler Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal, state and local laws, regulations and rules governing the operations, condition, inspection or safety of

its trains, locomotives, cars or equipment while such trains, locomotives, cars, or equipment are being operated by IORY on its behalf over the Joint Trackage. IORY shall indemnify, protect, defend, and save IOCR harmless from and against all fines, penalties and liabilities imposed upon IOCR or its officers, agents, and employees under such laws, rules and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of IORY to comply with its obligations in this regard.

B) IORY in its use of the Joint Trackage will comply in all respects with the operating rules and regulations of IOCR governing the Joint Trackage and the movement of IORY's trains, locomotives, cars, and equipment over the Joint Trackage shall at all times be subject to the orders of the transportation officers of IOCR as such orders pertain to the Joint Trackage.

C) IORY will make such arrangements with IOCR as may be required to have all of IORY's employees who shall operate over the Joint Trackage qualified for operation over the Joint Trackage, and IORY shall pay the IOCR, promptly upon receipt of bills therefore, any cost incurred by IOR in connection with the qualification of such employees of IORY.

D) The trains, locomotives, cars, and equipment of IOCR, IORY, an any other present or a future user of the Joint Trackage, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economic and efficient manner of movement of all traffic, provided, however, that passenger trains shall be given preference over road trains and road trains shall be given preference over switching movements.

ARTICLE 5. LIABILITY.

The responsibility of the parties hereto as between themselves for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with this Agreement, shall be apportioned as follows:

A) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only IORY being involved, IORY shall assume all liability therefore, and bear all cost and expense in connection therewith.

B) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, only IOCR being involved, IOCR shall assume all liability therefore, and bear all cost and expense in connection therewith.

C) Whenever any loss of, damage to, or destruction of any property whatsoever or injury to death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties being involved, the parties hereto shall separately assume all liability, cost, and expense for loss of and damage to said trains, locomotives, cars

(including, without limitation, lading,), and equipment operated by each of them and for injury to and death of each of their officers, agents, and employees and persons in each of their care and custody; and both parties hereto shall equally bear all liability, cost and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including, without limitation, the Joint Trackage) so occurring.

D) For purposes of this ARTICLE 5, pilots furnished by IOCR to IORY pursuant to ARTICLE 4 (c) of this Agreement shall be considered as the employees of IORY while such pilots are on board or getting on or off trains of IORY.

E) Each party hereto shall maintain, and provide the other with a copy of a policy of insurance covering the liability of each hereunder in the amount of Five Million Dollars or such other amount as may be mutually agreed.

ARTICLE 6. TERMINATION.

This Agreement and the trackage rights granted hereby shall continue unless or until terminated according to the provisions of this Article 6. Provided, however, and the foregoing notwithstanding, this Agreement shall terminate at midnight October 31, 2029. The exercise of termination rights shall not impair either party's rights under this Agreement or any cause or causes of action either party may have against the other for recovery of damages.

A) In the event of any substantial failure on the part of either party to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from the other party, the party providing such initial notice shall have the right, at its option, after first giving thirty (30) days' advance written notice thereof by certified mail, and notwithstanding any waiver of any prior breach thereof, to terminate this Agreement, unless the complaint of failure or default is cured by the other party to this Agreement within said notice periods.

ARTICLE 7. NOTICES.

Any notice required to be given under this Agreement shall be sufficient if deposited in the United States Mail First Class Postage prepaid and addressed to IOCR and IORY at:

General Manager
Indiana & Ohio Rail Corp.
497 Circle Freeway Dr, Suite 230
Cincinnati, OH. 45246
Or

General Manager
Indiana & Ohio Central Railroad, Inc.
497 Circle Freeway Dr, Suite 230
Cincinnati, OH. 45246

and WESTCO PA at:

Secretary-Treasurer
West Central Ohio Port Authority
76 East High Street
Springfield, OH 45502

or to such other address within the United States of America as the parties may designate.

ARTICLE 8. COMMENCEMENT DATE AND REGULATORY APPROVAL.

IORY's operations under this Agreement shall commence upon receipt of approval therefor from the appropriate Federal or State agency or the qualification under any available exemption from the necessity of such approval, ("Commencement Date.") The Commencement Date shall be evidenced by an exchange of correspondence between the appropriate operating officers of the parties hereto.

ARTICLE 9. GENERAL PROVISIONS.

A) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against any of the parties hereto.

B) All Section and Article headings are inserted for convenience on and shall not affect any construction or interpretation of this Agreement.

C) This Agreement and the any attachments or amendments hereto and integrated herewith contain the entire agreement of the parties hereto with respect to the subject

matter hereof and supersede any and all oral understandings between the parties hereto

D) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both of the parties to this Agreement.

E) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression mean the trains, locomotives, cars, and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the party having possession under this Agreement.

F) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

ARTICLE 10. ARBITRATION

Any dispute, controversy or claim arising out of or related to this agreement shall be settled by arbitration in accordance with the arbitration rules of the Association of

American Railroads, and the judgment on the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction over such award.

ARTICLE 11. STATE OF OHIO

The validity, enforceability, and interpretation of this Agreement shall be determined and governed by the laws of the State of Ohio.

ARTICLE 12. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Neither party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, partnership or corporation without obtaining the prior written consent of the other parties to this Agreement and any purported assignment made without the written consent of the other parties shall not be effective; provided, however, that such consent shall not be necessary if such transfer or assignment is to a purchaser, successor, or assign of all or substantially all of the rail properties of one of the parties hereto.

Indiana & Ohio Central Railroad

By: MC Bickert

Title President

Indiana & Ohio Rail Corp.

By: MC Bickert

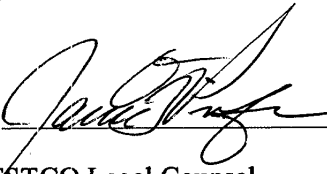
Title President

West Central Ohio Port Authority

By: Angela Jones

Title Secretary - Treasurer

Approved as to form:

By: 
WESTCO Legal Counsel

OCTOBER 20, 2004

WEST CENTRAL OHIO PORT AUTHORITY

RE: IOCR/IORY Trackage Rights Agreement

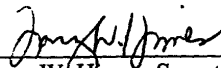
RES.: #25-04

Director Damewood moved to authorize the Secretary-Treasurer to execute a twenty-five year Trackage Rights Agreement with the Indiana & Ohio Central Railroad (IOCR) and the Indiana & Ohio Rail Corp (IORY) for the operation of IORY overhead traffic on the South Charleston line (M.P. 202.7 – 229.83) at an initial rate of \$0.29 per car-mile and using the Current AAR Railroad Cost Adjustment Factor beginning January 1, 2006 to revise the per car mile rate, with IOCR paying all expenses for filings with the Surface Transportation Board.

Director Ritenour seconded the motion, and the vote resulted as follows:

Director Agle	Yes
Director Conn	Absent
Director Damewood	Yes
Director Everhart	Yes
Director Gainer	Yes
Director Ritenour	Yes
Director Thompson	Yes

I, Larry Himes, Secretary-Treasurer to the Board of Directors of the West Central Ohio Port Authority, do hereby certify that the above is a true copy of a motion adopted as of this date.

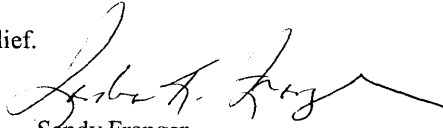

Larry W. Himes, Secretary-Treasurer

Cc: Secy/Treas
L. Ann Shipley
J. Peifer
D. Kamal
file

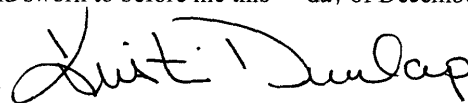
VERIFICATION

State of Florida)
)ss
County of Palm Beach)

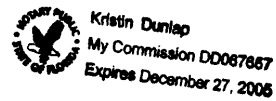
I, Sandy Franger, being duly sworn, depose and state that I am Vice President of the Indiana & Ohio Railway Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge, information and belief.


Sandy Franger

Subscribed and sworn to before me this 3RD day of December 2004.

Notary Public 

My Commission expires: 12.27.05



PERSONALLY KNOWN:
PRODUCED I.D.: X