

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
May 11, 2015
Part of
Public Record

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF)
SERVICE – IN LAPORTE, PORTER,)
AND STARKE COUNTIES, IN)

DOCKET NO.
AB-1232

CHESAPEAKE & INDIANA RAILROAD COMPANY, INC.’S
MOTION TO COMPEL

Chesapeake & Indiana Railroad Company, Inc. (“CKIN” and/or “Respondent”) hereby moves the Board pursuant to 49 C.F.R. § 1114.31 and 49 CFR §1117.1 to compel the Town of North Judson, Indiana (the “Town” and/or “Petitioner”) to answer fully to CKIN’s First Request for Admissions served on April 29, 2015.

I.
BACKGROUND

This motion concerns a proceeding initiated by the Town on April 16, 2015, whereby it seeks the adverse discontinuance of rail service provided by CKIN as the lessee and operator over a line of railroad putatively owned by the Town (the “Rail Line”). On April 29, 2015, CKIN served discovery on the Town consisting of a request for admissions, interrogatories, and a set of requests for production. At issue here is CKIN’s request for admissions, as follows:

Request for Admission No. 1: Admit or deny that the Town adopted Indiana Code 5-23 *et seq.* pertaining to public-private agreements.

Request for Admission No. 2: Admit or deny that INDOT provided funding for the 2004 purchase of the Rail Line.

Request for Admission No. 3: Admit or deny that Porter County, Indiana, provided funding for the 2004 purchase of the Rail Line.

Request for Admission No. 4: Admit or deny that LaPorte County, Indiana, provided funding for the 2004 purchase of the Rail Line.

Request for Admission No. 5: Admit or deny that Starke County, Indiana, provided funding for the 2004 purchase of the Rail Line.

On May 1, 2015, the Town filed its Responses to CKIN's First Request for Admissions. Its interrogatory and document production responses are still outstanding. In general, the Town objected to each of the admission requests on the grounds that the subject matter of each requests is not relevant to the subject matter and the information sought is not reasonably calculated to lead to the production of admissible evidence or has no bearing on whether discontinuance of rail service is permitted.

The Town's objections are a transparent attempt to avoid admitting the requests for admission or denying it. The Town should be compelled to respond to the request for admissions.

II. **ARGUMENT**

The Board's Rules of Practice generally provide that a motion to compel will be granted when the information sought is either relevant or likely to lead to the production of relevant evidence. *See* 49 C.F.R. § 1114.21(a). Discovery is available in abandonment and discontinuance proceedings where the information sought is relevant and might affect the result of the case. *SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ*, AB-441 (Sub-No. 2X) (STB served Feb. 14, 1997). The overriding issue in any case involving the adverse discontinuance of rail service or the adverse abandonment of a rail line is whether the public convenience and necessity permit termination of rail service. *See New York Cross Harbor R.R. v. STB*, 374 F.3d

1177, 1185 (D.C. Circ. 2004); *Paulsboro Refining Company, LLC—Adverse Abandonment—In Gloucester County, NJ*, STB Docket No. 1095, slip op. at 2 (STB served July 26, 2012)(adverse abandonment there compared to a discontinuance of service); *Tacoma E. Ry. Adverse Discontinuance of Oper. Application-Line of City of Tacoma in Pierce, Thurston, and Lewis Cntys, Wash.*, AB-548 (STB served Oct. 16, 1998); *Jacksonville Port Auth.—Adverse Discontinuance—in Duval Cnty., Fla.*, AB-469 (STB served July 17, 1996); *Cheatham Cnty. Rail Auth. “Application and Petition” for Adverse Discontinuance*, AB-379X (ICC served Nov. 4, 1992). The evidence that CKIN expects to get through its discovery will be very relevant as to whether the public convenience and necessity require the termination of the rail service CKIN has been providing over the Rail Line for the past eleven years under an agreement that has been extended twice.

A. Request for Admission No. 1 Seeks Relevant Information as to the Likelihood of the Rail Line’s Termination.

CKIN expects to establish whether the Town is required by Indiana law to solicit proposals to operate the line by issuing a Request for Proposal (RFP) to potential operators. Back in 2004, the Town issued an RFP to solicit potential operators and picked CKIN as the best candidate. CKIN anticipates that Indiana law will once again require it to issue an RFP.¹ To the best of CKIN's knowledge, the Town has not begun this process with the possible result that all rail service will terminate should the Town's application be granted and CKIN be evicted from the line. Alternatively, CKIN believes that the Town may on a sole source basis offer a new lease and operating agreement to

¹ The statute referenced in Request for Admission No. 1, if adopted by a governmental entity, requires the issuance of an RFP.

the Hoosier Valley Railroad Museum, a nonprofit entity that has no expertise operating a common carrier line of railroad handling grain. Accordingly, cessation of rail service is a distinct possibility and this application should be viewed as one for adverse abandonment and judged under those more stringent standards. *See City of S. Bend v. Surface Transp. Bd.*, 566 F.3d 1166 (D.C. Cir. 2009); *New York Cross Harbor R.R.*, 374 F.3d 1177.

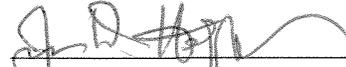
B. Request for Admissions No. 2-5 Seek Relevant Information as to the Propriety of the Town's Imminent Application for Adverse Discontinuance.

The purpose of the Request for Admissions No. 2-5 is to determine how the Rail Line's 2004 acquisition from CSX Transportation, Inc. was financed. While the Town may be the ostensible titleholder, CKIN believes it may not be the real party in interest and may not have the standing to file this application. CKIN understands that the acquisition was financed in large part by some combination of Indiana Department of Transportation and the three counties (LaPorte, Porter, and Starke), and that these parties have yet to express their views to the Board. The Town's response to each of these requests is essential to determining whether the Town has the basis to seek this relief and change operators on the line without consulting these other parties.

**III.
CONCLUSION**

For the reasons stated above, the Board should issue an Order overruling the Town's meritless objections and compel the Town to respond in full to CKIN's First Request for Admissions.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2015, I served a copy of the foregoing requests for production upon all parties of record by first-class United States mail and by e-mail.



JOHN D. HEFFNER

BEFORE THE
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TOWN OF NORTH JUDSON, INDIANA)	
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RESPONSES TO FIRST REQUEST FOR ADMISSIONS

The Town of North Judson, Indiana (the Town) hereby responds to First Request for Admissions (Request) submitted by Chesapeake & Indiana Railroad Company, Inc. (CKIN) on April 29, 2015. Abbreviations in this Response have the same meaning as in the Definitions on page 2 of the Request, unless otherwise noted.

RESPONSES TO REQUEST

REQUEST NO. 1: Admit or deny that the Town adopted Indiana Code 5-23 *et seq.* pertaining to public-private agreements.

Response:

1. Objection on the ground that the subject matter of this Request is not relevant to the subject matter involved in this discontinuance proceeding (49 C.F.R. § 1114.21[a][1]), and the information sought is not reasonably calculated to lead to the discovery of evidence that would be admissible in the discontinuance proceeding (49 C.F.R. § 1114.21[a][2]). Whether or not the Town adopted an Indiana statute is clearly a matter of Indiana law that has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under federal law, i.e., 49 U.S.C. § 10903(d).

REQUEST NO. 2: Admit or deny that INDOT provided funding for the 2004 purchase of the Rail Line.

Response:

2. Same grounds for objection as Request No. 1. Whether or not INDOT provided funding for the Town's purchase of the Rail Line in 2004 has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST NO. 3: Admit or deny that Porter County, Indiana, provided funding for the 2004 purchase of the Rail Line.

Response

3. Same grounds for objection as Request No. 1. Whether or not Porter County, Indiana provided funding for the Town's purchase of the Rail Line in 2004 has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST NO. 4: Admit or deny that LaPorte County, Indiana, provided funding for the 2004 purchase of the Rail Line.

Response

4. Same grounds for objection as Request No. 1. Whether or not LaPorte County, Indiana provided funding for the Town's purchase of the Rail Line in 2004 has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

REQUEST NO. 5: Admit or deny that Starke County, Indiana, provided funding for the 2004 purchase of the Rail Line.

Response

5. Same grounds for objection as Request No. 1. Whether or not Starke County, Indiana provided funding for the Town's purchase of the Rail Line in 2004 has no bearing on whether discontinuance of CKIN's rail service is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d).

Respectfully submitted,

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Respondent

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DATE SERVED: May 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2015, I served a copy of the foregoing Responses to First Request for Admissions by e-mail and first-class, U.S. mail, on the following:

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