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Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. AB-1232, *Town of North Judson, Indiana -- Adverse Discontinuance of Service -- in LaPorte, Porter, and Starke Counties, IN*

Dear Ms. Brown:

Hereby transmitted is a Reply in Opposition to Motion to Compel Responses to Interrogatories and Requests For Production for filing with the Board in the above referenced matter.

Respectfully submitted,

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Attorneys for Chesapeake and Indiana Railroad Company, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)
-- ADVERSE DISCONTINUANCE OF) DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,) AB-1232
AND STARKE COUNTIES, IN)

**REPLY IN OPPOSITION TO MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION**

TOWN OF NORTH JUDSON, INDIANA
P.O. Box 56
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Attorneys for Respondent

DUE DATE: June 8, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

TOWN OF NORTH JUDSON, INDIANA)	
-- ADVERSE DISCONTINUANCE OF)	DOCKET NO.
SERVICE -- IN LAPORTE, PORTER,)	AB-1232
AND STARKE COUNTIES, IN)	

**REPLY IN OPPOSITION TO MOTION TO COMPEL
RESPONSES TO INTERROGATORIES
AND REQUESTS FOR PRODUCTION**

The Town of North Judson, Indiana (the Town) hereby replies in opposition to a Motion to Compel Responses to Interrogatories and Requests for Production (Motion) filed by Chesapeake & Indiana Railroad Company, Inc. (CKIN) on May 22, 2015.

DECISIONAL STANDARDS

As the Board said just a few days ago, “discovery is typically disfavored in abandonment cases”. *Consolidated Rail Corp. -- Abandonment Exemption -- in Hudson County, NJ*, 2015 WL 2442823 at *3 (Docket No. AB-167 [Sub-No. 1189X], decision served May 22, 2015); *see, also, Central RR Co. of Ind. -- Abandonment Exemption -- in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, 1998 WL 148638 at *3 (Docket No. AB-459 [Sub-No. 2X], decision served April 1, 1998) (“Protestants have failed to cite a single precedent where the Board or its predecessor agency has granted a motion to compel discovery in an abandonment case.”).

The above-cited decisions involved conventional abandonments initiated by the owners of the rail lines, but the principle has equal or greater application where, as here, the subject matter is an application for adverse discontinuance of rail service in which the owner of a rail line proposes to replace the incumbent operator upon expiration of the operating agreement

between them. Inasmuch as rail service would continue regardless of whether such an application were to be granted, the factors bearing on whether discontinuance is permitted or required by public convenience and necessity under 49 U.S.C. § 10903(d) are highly circumscribed. Essentially, such an application is to be granted unless it is shown that shippers on the rail line are likely to be seriously harmed as a result of the rail service to be provided by the replacement rail operator. *See, e.g., Cheatham County Rail Auth. "Application and Petition" for Adverse Discontinuance*, 1992 ICC LEXIS 224 at *13-15 (Finance Docket No. 32049, renumbered AB-379X, decision served November 4, 1992).

Correspondingly, if discovery is to be permitted at all in an abandonment proceeding with such a narrow issue, such discovery must be limited and specifically directed at the likely effect on shippers of the rail service to be provided by the replacement operator.

The discovery propounded by CKIN is neither. It consists of 27 interrogatories, 27 requests for production of documents, and 5 requests to admit^{1/} -- 59 items of discovery in all. It is the opposite of having a limited focus on the narrow applicable issue (as one of many examples, Interrogatory No. 25 seeks funding sources for the Town's purchase of the Rail Line in 2004, a matter that does not remotely bear on the issue at hand). Discovery of that magnitude and lack of focus is abusive and designed to harass the Town. Accordingly, CKIN's Motion to Compel should be denied on a summary basis.

If CKIN's Motion to Compel is not denied on that broad basis, it should be denied when tested against the decisional standards of 49 C.F.R. § 1114.21(a) and (b), i.e., parties generally

^{1/} The Town filed a Reply in Opposition to CKIN's Motion to Compel Responses to Requests to Admit on May 13, 2015.

are entitled to discovery regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding, and regarding information that would be inadmissible as evidence, if such information appears reasonably calculated to lead to the discovery of admissible evidence. *Consolidated Rail Corp. -- Abandonment Exemption -- in Hudson County, NJ, supra*, 2015 WL 2442823 at *3.

ARGUMENT IN OPPOSITION TO THE MOTION

1. Discovery Related To The Town's Legal Authority To Terminate The Operating Agreement with CKIN (Motion at 4, Request for Production Nos. 3-10 and 15-18 and Interrogatory Nos. 25-26)

CKIN's basic contention is that because Indiana DOT and Porter, LaPorte, and Starke Counties financed the Town's purchase of the Rail Line in 2004, the Town may not have the right to terminate CKIN's service without the cooperation and approval of those entities. (Motion at 4).

Indiana law governs such a right to terminate. The Board does not have jurisdiction to make that determination. Accordingly, discovery on that issue is not relevant to the subject matter of the adverse discontinuance proceeding.

There is no contention that the Town lacks standing to file the application for adverse discontinuance. As owner and sole party to the Operating Agreement with CKIN, the Town's standing is beyond dispute.

In any event, the Operating Agreement between the Town and CKIN is not being terminated for cause, but instead is to expire by its own terms.

2. Discovery Related To The Nature Of The Proceeding (Motion at 5, Request for Production 1-2, 19, and Interrogatory Nos. 10-13, 22-23)

CN's basic contention seems to be that the Town's close relationship with Hoosier Valley Railroad Museum (the Museum) establishes that the proceeding is akin to a forced discontinuance of trackage rights.

The argument is a non sequitur. Even if the various allegations about the Museum were true, they would not establish that this proceeding is akin to a forced discontinuance of trackage rights. We repeat: it is proposed to replace CKIN as rail line operator only when the term of the Operating Agreement expires on December 31, 2015 or upon the effectiveness of a decision granting this application if later than that date. This is not a forced discontinuance. It is an action to displace an entity who will be without any contractual or property right in the rail line. The relationship between the Town and the Museum has nothing whatsoever to do with that irrefutable fact.

3. Discovery Related To Alleged Cessation of Service (Motion at 5-6, Interrogatory Nos. 14-18, 24)

This contention is substantially the same as CKIN's contention in support of its Motion to Compel the Town to respond to Request for Admission No. 1. (*See* Motion to Compel Responses to First Request for Admissions filed on April 29, 2015, Request No. 1). The Town hereby adopts its Argument in Opposition to that Request. (*See* Reply in Opposition to Motion to Compel Responses to Request for Admissions, Opposition to Request No. 1).

4. Discovery Related To Interests That Will Be Burdened By The Discontinuance (Motion at 6-7, Request for Production, Nos. 20-22)

This discovery is based on the assumption that the Town or the Museum, or both, will succeed CKIN as operator(s) of the rail line, and argues that neither has the ability or experience to operate a rail line (Motion at 7).

The Town hereby states unequivocally that rail service will continue over the line, but that neither the Town nor the Museum will be the replacement operator of the rail line. Consequently, discovery designed to denigrate the Town and Museum is not relevant.

The Town is very close to disclosing the identity of the rail carrier that it has chosen to be the replacement operator of the rail line. CKIN and the Board will be notified of that replacement operator. CKIN will have amply opportunity in its Protest to provide any evidence or argument regarding that proposed replacement operator.

5. Discovery Related To The Town's Satisfaction With CKIN's Operations Prior To 2014 (Motion at 7, Request for Production Nos. 23-24 and Interrogatory Nos. 4-9, 19-20)

This discovery is designed to establish that prior to 2014, the Town did not express dissatisfaction with CKIN's operation of the rail line (Motion at 7).

That matter is wholly irrelevant to the adverse discontinuance proceeding. Replacement of CKIN as operator of the rail line is not predicated on dissatisfaction with CKIN's service at any time in the past, but rather is based on the Town's desire for a change of operators upon expiration of the existing Operating Agreement by its terms. The Town has an absolute contractual right to do so regardless of the absence of any alleged default by the incumbent rail carrier.

6. Discovery Related To Danger To Shippers If The Application Is Granted (Motion at 8, Request for Production No. 25)

The Motion in regard to Request for Production No. 25 should be denied because the Town fully responded to that Request by stating that the only document responsive to that Request is not produced because it is protected from discovery as a result of the Attorney Work Product Privilege. (See Response to First Set of Requests for Production, dated May 13, 2015, at 10). The Town identified the content of the privileged document as required by law (*id.*). CKIN does not allege that there are other documents that were not produced in response to this Request, nor that the document withheld is not privileged.

7. Discovery Related To Preservation Of The Rail Line As A Historic Resource (Motion at 8, Interrogatory No. 21)

The Motion in regard to Interrogatory No. 21 should be denied because the Town fully responded to that Interrogatory. (See Response to First Set of Interrogatories, dated May 13, 2015, at 7 and documents at Appendix B). There is no contention that there are other documents or matter that were not provided in response to this Interrogatory.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, CKIN's Motion should be denied in its entirety. As a result of CKIN's filing of 59 items of discovery and motions to compel responses in a discontinuance proceeding in which discovery is disfavored, this proceeding is fast becoming like *Consolidated Rail Corp. -- Abandonment Exemption -- in Hudson County, NJ, supra*, in which the Board said (2015 WL 2442823 at *27):

. . . We note . . . that the record has become voluminous and, in our opinion, needlessly so. Although the Board cannot limit the filings submitted by the parties in the future, we expect the parties to exercise sound judgment when weighing the need for future motions or objections.

In denying this latest Motion submitted by CKIN, the Board should admonish CKIN to refrain from filing these numerous lengthy pleadings designed solely to harass the Town.

Respectfully submitted,

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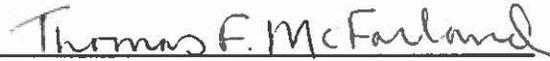
DUE DATE: June 8, 2015

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2015, I served a copy of the foregoing Reply in Opposition to Motion to Compel Responses to Interrogatories And Requests For Production by e-mail and first-class, U.S. mail, postage prepaid, on the following:

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