

LAW OFFICES
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September 30, 2013

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

234912
ENTERED
Office of Proceedings
September 30, 2013
Part of
Public Record

re: Docket No. FD 35247, Grenada Railway, LLC--Acquisition and Operation
Exemption--Illinois Central Railroad Company and
Waterloo Railway Company

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Reply of Grenada Railway, LLC to the Motion to Compel Discovery filed by Mr. Robert J. Riley on September 26, 2013.

I certify that I this day have mailed a copy of this letter and its attachment to each party of record.

If you have any question concerning this pleading or if I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

att.

cc: Parties of record

SURFACE TRANSPORTATION BOARD

Docket No. FD 35247

GRENADA RAILWAY, LLC--ACQUISITION AND OPERATION EXEMPTION--
ILLINOIS CENTRAL RAILROAD COMPANY and
WATERLOO RAILWAY COMPANY

REPLY OF GRENADA RAILWAY, LLC

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Attorney for

GRENADA RAILWAY, LLC

Dated: September 30, 2013

SURFACE TRANSPORTATION BOARD

Docket No. 35247

GRENADA RAILWAY, LLC--ACQUISTION AND OPERATION EXEMPTION--
ILLINOIS CENTRAL RAILROAD COMPANY
and WATERLOO RAILWAY COMPANY

REPLY OF GRENADA RAILWAY, LLC

Applicant, Grenada Railway, LLC ("GRYR"), pursuant to 49 C.F.R.

§ 1104.13(a), replies to Mr. Robert J. Riley's Motion to Compel Discovery from GRYR, filed September 26, 2013, and respectfully asks that it be dismissed or denied and as grounds therefor states, as follows:

1. Mr. Riley introduces his Motion by alleging that the undersigned was not willing to cooperate. That as counsel for GRYR the undersigned did not acquiesce with Mr. Riley's initial discovery request of September 5, 2013, and answer the 70 interrogatories and produce the 11 documents sought by Mr. Riley was perfectly appropriate. As the undersigned stated in his letter of September 10, 2013, appended to Mr. Riley's Motion, the discovery requests were objectionable because they were untimely, inappropriate, excessive, harassing, annoying, oppressive, burdensome and expensive.

2. Mr. Riley's initial discovery request was untimely, having been served a year after Mr. Riley, on September 11, 2012, filed his Petition to Revoke the Exemption, and nine months after the Board, by its Decision served December 10, 2012, instituted the proceeding under 49 U.S.C § 10502 The Board, by its Decision, served July 1, 2013,

requested certain information of GRYR to be filed by July 22, 2013, and invited Mr. Riley and others to file their replies by August 1, 2013. GRYR answered the Board's questions on July 19, 2013, and Mr. Riley filed his Reply on July 29, 2013. It was only after GRYR on August 21, 2013, filed its Petition for Leave to File Surreply, that Mr. Riley chose to serve his initial discovery request, and that was far too late in the proceeding to initiate discovery.

3. Mr. Riley's initial discovery request was inappropriate. In an obvious effort to view the HIGHLY CONFIDENTIAL financial statements for 2012 and the first six months of 2013 of GRYR appended to its Petition for Leave to file Surreply, filed under seal subject to the Board's Protective Order, served August 29, 2013, Mr. Riley signed the Undertaking to secure HIGHLY CONFIDENTIAL material. A copy of the Undertaking is attached as Exhibit A.

4. Mr. Riley's initial discovery request was inappropriate for the further reason that, among other things, contrary to 49 C.F.R. § 1114.30, it requested the production of documents of persons not parties in the proceeding. Document production request no. 1 asked for the production of the original sale agreement of the Grenada Line between IC [Illinois Central Railroad Company] and A&K [A&K Railroad Materials, Inc.] Mr. Riley concluded his filing with the statement "I also request that the board compels the IC to produce the original sale agreement for comparison." Mr. Riley seems to be unaware that neither IC nor A&K are parties to the subject proceeding, and the production of documents cannot be required of them.

5. Mr. Riley's initial discovery request was excessive. 70 interrogatories were just too many. Under Rule 33 of the Federal Rules of Civil Procedure a party may pose

only 25 interrogatories of another party. While the Board, unlike the Interstate Commerce Commission, no longer tends to follow the Federal Rules of Civil Procedure in assessing the reasonableness of the application of its own discovery rules, common sense would suggest that a party is acting unreasonably if it is incapable of reducing the information it actually needs to fewer than 70 interrogatories.

6. Mr. Riley's initial discovery request was excessive for the further reason that it was in part a verbatim copy of the discovery request served on GRYR by the Mississippi Transportation Commission in the discontinued abandonment proceeding, Docket No. AB 1087X, *Grenada Railway LLC--Abandonment Exemption--in Grenada, Montgomery, Carroll, Holmes, Yazoo. and Madison Counties, MS*.

7. By not responding to the 70 interrogatories or producing the 11 documents which Mr. Riley sought by his initial discovery request, the undersigned sought to protect GRYR from discovery which clearly was harassing, annoying, oppressive, burdensome and expensive without seeking the aid of the Board, as GRYR might have done, pursuant to 49 C.F.R. § 1114.21(c).

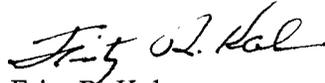
8. In any event, pursuant to 49 C.F.R. § 1114.31(a), a motion to compel must be filed within 10 days after expiration of the period allowed for submission of answers to interrogatories. Mr. Riley asked that the responses to his initial discovery request be served within 15 days of the date of service. Since Mr. Riley served his initial discovery request on September 5, 2013, his Motion to Compel needed to be filed with the Board on or before September 15, 2013. The Motion to Compel, however, was not filed until ten days later, on September 26, 2013.

9. Since the Motion to Compel does not comply with the Board's rules, the Motion to Compel should be rejected, pursuant to 49 C.F.R. § 1104.10(a), or denied.

Respectfully submitted,

GRENADA RAILWAY, LLC

By its attorney,



Fritz R. Kahn

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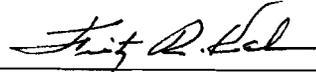
Tel.: (202) 263-4152

Dated: September 30, 2013

CERTIFICATE OF SERVICE

I certify that I this day have served the foregoing Reply of Grenada Railway, LLC upon each party of record by mailing it a copy by prepaid, first-class postage.

Dated at Washington, DC, this 30th day of September, 2013.



Fritz R. Kahn

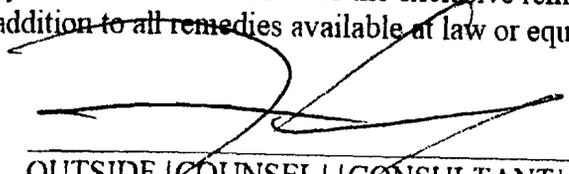
EXHIBIT A

UNDERTAKING

HIGHLY CONFIDENTIAL MATERIAL

As outside [~~counsel~~] [consultant] for Robert J. Riley, for which I am acting in this proceeding, I, Robert J. Riley, have read the Protective Order served on August 29, 2013, governing the production of highly confidential documents in Docket No. FD 35247, understand the same, and agree to be bound by its terms. I further agree not to disclose any data, information or material designated "HIGHLY CONFIDENTIAL" to any person or entity who: (i) is not eligible for access to "HIGHLY CONFIDENTIAL" material under the terms of the Protective Order, or (ii) has not executed an Undertaking for Highly Confidential Material in the form hereof. I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any documents designated "HIGHLY CONFIDENTIAL" that I will limit my use of those documents and the information they contain to this proceeding and any judicial review proceeding arising therefrom: that I will take all necessary steps to assure that said documents and information will be kept on a confidential basis by any outside counsel or outside consultants working with me: that under no circumstances will I permit access to said documents or information by personnel of my client, its subsidiaries, affiliates, or owners: and that at the conclusion of this proceeding and any judicial review proceeding arising therefrom I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel and consultants may retain file copies of pleadings filed with the Board. I further understand that I must destroy all notes or other documents containing "HIGHLY CONFIDENTIAL" information in compliance with the terms of the Protective Order. Under no circumstances will I permit access to documents designated "HIGHLY CONFIDENTIAL" by, or disclose any information contained therein to, any persons or entities for which I am not acting in this proceeding.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that parties producing confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.



 OUTSIDE [COUNSEL] [CONSULTANT] TO
Robert J. Riley

 [Party name]
 Dated: 09/05/2013