

April 16, 2015

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BY E-FILING

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

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

Dear Ms. Brown:

I am writing on behalf of the Chesapeake & Indiana Railroad (“CKIN”) in connection with the above-captioned proceeding. By this letter, CKIN is advising the Board that it opposes both the Town of North Judson’s (“the Town”) fee waiver request and its request for waiver of certain abandonment/discontinuance filing requirements such as that for a system diagram map or description. CKIN reserves the right to submit a further substantive response within the 20-day timeframe prescribed by the Board’s Rules of Practice.

Regarding the fee waiver request, CKIN contends that the Town is not entitled to that relief. Despite a general policy allowing fee waivers for public agency applicants, the regulations provide that the term “governmental entity” does not include a government-subsidized transportation company. 49 CFR §1002.2(e) (1). As the Board may recall, the Town originally acquired the subject rail line through an offer of financial assistance. *CSX Transportation, Inc.-Abandonment Exemption In LaPorte, Porter, and Starke Counties, IN*, AB-55 (Sub-No. 643X)(STB served May 14, 2004). While it contracted with CKIN to provide operations over the line, under long established agency law the Town has a residual common carrier obligation and should be considered a “rail carrier” for STB regulatory purposes. Hence, it is not entitled to a fee relief. Moreover, as

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CKIN will show in the forthcoming proceeding, the Town's stewardship of the Line has been so intertwined with that of the Hoosier Valley Railroad Museum so that it has been actively involved in the day-to day management of the line. This is not the typical case of a passive public agency rail line owner wanting to evict an undesirable rail carrier tenant. Rather it is more akin to a forced discontinuance of trackage rights of the tenant rail carrier sought by the rail line's owner as in *Thompson v. Texas Mexican R. Co.*, 328 U.S. 134 (1965) or possibly even an abandonment. Finally, it is our understanding that the Town is required under Indiana law to solicit bids for operation of the line and that it has not even begun that process or entertained discussions with future operators. There is a distinct possibility that the Town might become the actual operator should the Board grant its application. Accordingly, the Town is not eligible for any fee relief.

Sincerely yours,



John D. Heffner

cc: Thomas F. McFarland, Esq.
Rachel Arndt, Esq.
Bruce Hugon, Esq.
Mr. R. Powell Felix

Certificate of Service

I hereby certify that on April 16, 2015, I served a copy of the foregoing reply to the Petition for Waiver of Filing Fee and Exemption in Docket No. AB-1232, *Town of North Judson, Indiana—Adverse Discontinuance of Service—in LaPorte, Porter, and Strake Counties, IN*, upon all parties of record by first class United States Mail and, where available, by email.

/s/ John D. Heffner