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February 25, 2011

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: *Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and Vanderburgh Counties, IN*, STB Docket No. AB-1065X

Dear Ms. Brown:

Attached hereto is Indiana Southwestern Railway Co.'s ("ISW") Supplement to its December 30, 2010 Appeal, filed in accordance with the Board's order in this proceeding served February 11, 2011.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

Enclosures

cc: J. Michael Carr
Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB Docket No. AB-1065X

**INDIANA SOUTHWESTERN RAILWAY CO.
– ABANDONMENT EXEMPTION –
IN POSEY AND VANDERBURGH COUNTIES, IN**

**SUPPLEMENT TO INDIANA SOUTHWESTERN RAILWAY CO.'S APPEAL OF
A DECISION OF THE DIRECTOR OF THE OFFICE OF PROCEEDINGS
ACCEPTING THE TOWN OF POSEYVILLE'S OFFER OF FINANCIAL ASSISTANCE**

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February 25, 2011

**Attorneys for Indiana Southwestern
Railway Company**

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

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In accordance with the procedural schedule set forth in the Board’s decision in this proceeding served February 11, 2011, Indiana Southwestern Railway Company (“ISW”) hereby supplements its December 30, 2010 appeal of the decision of the Director of the Office of Proceedings (the “Director”), served December 23, 2010 (“Director’s Decision”) accepting the Town of Poseyville’s (the “Town” or “Poseyville”) offer of financial assistance (“OFA”). ISW’s Supplement is occasioned by Board-acknowledged “concerns raised about [Poseyville’s] financial responsibility or involvement with third parties” (February 11 Decision at 4), and by Poseyville’s responses to ISW-issued discovery requests to which Poseyville had adamantly refused to supply substantive responses until the Board ordered it to do so.

As will be discussed below, Poseyville’s substantive responses to ISW’s discovery requests reinforce what ISW has been saying all along. Poseyville does not have the funds to purchase the rail lines that are the subject of this OFA proceeding, stating that it hopes to secure the necessary funds through some vague combination of grants, loans, and contribution from a would-be private rail service provider, none of which it has made any concerted effort to obtain.

The Town also admits that there are no prospects for rail service, no shippers or potential shippers who need or have requested service, and that the Town has no intent to operate the Line. These responses reflect what ISW had feared all along – that Poseyville is not a financially responsible offeror because it does not have and will not have at the end of the OFA process the resources to purchase the subject rail Lines, and there are absolutely no prospects for active rail service on the Line. For these two simple reasons, the Board should reverse the Director’s Decision, reject Poseyville’s OFA, and terminate this proceeding.

BACKGROUND

As the Board is well aware, the subject proceeding was triggered by ISW’s notice of exemption to abandon 17.2 miles of interconnecting rail lines (the “Lines”) extending between: (1) milepost 227.5 at Poseyville, IN, and milepost 240.2 near German Township, IN (approximately 12.7 miles); and (2) milepost 277.5 at Cynthiana, IN, and milepost 282.0 at Poseyville, IN (approximately 4.5 miles). Poseyville has since come forward with a proposal for the forced sale of the Lines through the OFA process. In invoking the OFA process, Poseyville has at no time offered evidence to show that it has the resources to purchase the Lines, relying instead (and exclusively) on the regulatory *presumption* that government entities are financially responsible. ISW has challenged Poseyville’s OFA as invalid, casting doubt on Poseyville’s financial wherewithal as a small town to buy the Lines, and questioning the Town’s motives in initiating the OFA process. In an effort to gauge Poseyville’s financial means and its motivations, ISW served the Town with discovery, which Poseyville refused to answer.

Additional factual and procedural background details on this proceeding are included in the Board’s February 11 Decision, and that background is incorporated herein by reference. Suffice to note that the Board has stated that ISW’s concerns are “highly pertinent to the OFA process, which has a primary goal of continuing rail service,” and that “information related to

[ISW's] concerns appears to be available only from the Town." February 11 Decision at 4. The Board observed that, despite numerous opportunities to do so, Poseyville has not "provided a substantive response that addresses concerns raised about its financial responsibility or involvement with third parties." *Id.* Moreover, the Board stated that "ISW's allegations are relevant and serious enough to permit limited discovery," and ordered that Poseyville to provide substantive responses to ten selected ISW discovery requests that the Board deemed pertinent to the allegations. *Id.*

Late on February 18, Poseyville served ISW with responses to ISW's discovery. The responses (attached hereto as Exhibit A) are terse, contradictory, and incomplete, and oftentimes not directly responsive. Nevertheless, based on the limited information conveyed in Poseyville's responses, the following facts have emerged:

- Poseyville does not possess sufficient discretionary funds to purchase the Lines. Response to Request No. 2.
- Poseyville does not have committed resources (such as a loan guarantee, line of credit, third-party commitment of funds, or government grant) from which it can fund the purchase of the Lines. Rather, depending upon the purchase price that the Board may set, Poseyville plans to "identify grant and loan programs" from which it might solicit the necessary funds. Poseyville has not begun a loan or grant solicitation/application process. *Id.*¹

¹ Poseyville adds an irrelevant and inaccurate comment regarding ISW's participation in an Indiana Department of Transportation-administered Industrial Rail Service Fund ("IRSF"), suggesting that, if ISW could obtain funds under this program, then Poseyville, despite the lack of any traffic prospects, also could do so. ISW doubts that Poseyville could obtain IRSF funds to buy rail lines with no serious future traffic prospects. ISW is familiar with the IRSF program, using program funds to repair and rehabilitate certain badly deteriorated grade crossings that the communities wanted ISW to repair. As there was no traffic on the Lines and ISW had little revenue (and wasn't yet prepared to file for abandonment authority), ISW used funds from the IRSF program to undertake the requested work. Now that ISW is abandoning the Lines, ISW will arrange to repay portions of the past IRSF funding.

- Poseyville claims to have received “informal inquiries” from third parties concerning funds for the purchase of the Lines, but it withholds all details concerning such contacts. Response to Request No. 7.²
- Poseyville “has no current plan to borrow money to purchase the Lines,”³ but would seek grants “and/or participation from qualified private operators.” Response to Request No. 9
- Poseyville has no “formal plans” for the future salvage of any portion of the Lines. Response to Request No. 23.⁴
- Poseyville has done nothing to evaluate the foreseeable future demand for service on the Lines, effectively conceding that no future prospects are known to exist. Response to Request No. 28.⁵
- Poseyville has no plans for the future operation of the Lines. Response to Request No. 30.⁶
- Poseyville has not solicited any proposals for salvage of any portion of the Lines, but does not say whether it has been in contact with track salvage companies. Response to Request No. 31.⁷

² ISW’s Request No. 7 did not distinguish between “formal” and “informal” third-party contacts. Rather, the request sought to determine whether Poseyville was acting on the basis of *any* third-party contact (no matter if the overture was “formal” or “informal” – whatever either terms may mean to the Town), or if it was acting entirely on its own. The Town’s response is evasive, and could be read to indicate either that Poseyville is acting alone with no third-party support or assistance, or that Poseyville is acting on the basis of self-described “informal” consultations that it has refused to disclose.

³ Poseyville’s response that it has no current plans to borrow money contradicts its Response to Request No. 2, in which the Town states that it would seek to identify “grant *and loan* programs” (emphasis added) from which it could fund the Lines’ purchase price. Poseyville’s responses to Requests Nos. 9 and 10 reflect that the Town has ruled out the use of loans.

⁴ Here again, Poseyville’s response is curious. Poseyville has responded as if ISW’s Request No. 23 focused on “formal plans” – a term not found in the request – and begins its response by stating that the information sought by ISW’s request is “not applicable.”

⁵ Request No. 28, seeks information about the Line’s future traffic prospects. Poseyville has responded that the question is “not applicable,” adding (as all are well aware) that the Lines have “no active shippers.”

⁶ Poseyville states that it has no “formal plan for operation” of the Line, although, once again, ISW’s inquiry made no distinction between a “formal” or “informal” plan.

⁷ Request No. 31 asked about Poseyville’s contact with track salvage companies, specifically about whether any such company “has contacted or has made any proposal to the Town in connection with the subject rail line abandonment.” Poseyville ignored this question, responding instead to a question that ISW did *not* ask (*i.e.*, whether ISW has *solicited* any such proposals).

ARGUMENT

I. STANDARD OF REVIEW OF A DIRECTOR'S DECISION ACCEPTING AN OFA

In its original reply to ISW's appeal of the Director's Decision, Poseyville contended that the applicable standard of Board review is set forth at 49 CFR § 1011.6(b), which permits Board reversal of decisions rendered by "individual Board employees" in "exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." In its January 18, 2011 Motion to Compel Responses to Discovery and Reply in Opposition to Poseyville's Petition for Exemption ("Motion to Compel"), ISW responded in detail to this issue, pointing out that § 1011.6(b) is clearly inapplicable to this case, because the Director's authority to accept or reject an OFA derives from 49 CFR 1011.7(a)(2)(ii), not from § 1011.6. Motion to Compel at 11-14. In fact, ISW observed in its Motion to Compel, that § 1011.7(a) contains no specific standard of review, indicating (in keeping with recent Board decisions) that the Board preserved for itself wide discretion to act on appeals from decisions issued pursuant to § 1011.7(a) entirely on a case-by-case basis.

A very recent Board decision indicates that the Board applies the 49 CFR § 1152.25(e)(2)(ii) standard to review Director's decisions in abandonment proceedings issued pursuant to authority delegated to the Director under § 1011.7(a).⁸ Under § 1152.25(e)(2)(ii), the Board may reverse a Director's order where there is a showing that the Director's action will be affected materially because of new evidence, changed circumstances, or material error. Here, Board-ordered discovery has resulted in new evidence that ISW was unable to obtain before that directly rebuts the regulatory presumption of Poseyville's financial responsibility, and that

⁸ See Chesapeake Railroad Company – Certificate of Interim Trail Use and Termination of Modified Certificate, STB Finance Docket No. 32609, slip op. at 4-5 (STB served Feb. 24, 2011) (appeal of a Director's decision on a Trails Act matter delegated to her pursuant to 49 CFR § 1011.7(a)(2)(iv) would be reviewed pursuant to the standard set forth at § 1152.25(e)(2)(ii)).

undercuts any plausible assumptions that there is a public need for rail transportation or that the Town is a bona fide offeror with concrete plans to continue or preserve rail service.

But even if the applicable standard of review is the same as or similar to the one contained at §1011.6(b), there is still sufficient basis to reverse the Director's Decision based on the expanded record in this case. The Board has already indicated that exceptional circumstances exist here – the Board has observed that the challenge of a “public body's” financial responsibility at this stage of the OFA process is novel (February 11 Decision at 4) – and continuing to subject ISW to the OFA process where the offeror hasn't the resources to buy the Lines, and where the offeror has not shown a need for rail service would be manifestly unjust, all of which warrants reversal of the Director's Decision.

II. THE STANDARD FOR ACCEPTING OR REJECTING AN OFA

For an OFA to be accepted, the Board applies a two part test: (1) the offeror must be financially responsible; and (2) the offer must be bona fide. To show financial responsibility, the OFA need not be detailed, but an offeror must show that it has the financial ability to pay for and acquire the line. Union Pacific Railroad Company – Abandonment – in New Madrid, Scott, and Stoddard Counties, MO, STB Docket No. AB-33 (Sub-No. 261), slip op. at 1 (STB served Jul. 30, 2009) (“Union Pacific – Missouri”) (citing Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981), and 49 CFR 1152.27(c)(1)(ii)(B)). Although the Board has not established a bright-line standard for assessing an offeror's financial responsibility, the Board has rejected OFAs by entities that have neither the necessary purchase funds, nor ready access to such monies through a committed source (such as a bank loan or line of credit, verified third party commitment, etc.). For example, the Board has rejected OFAs where the offeror has – (1) not provided verified assurances from the third party from which the offeror intended to secure the needed funds (see Union Pacific – Missouri at 2); (2) no agreement with the purported source of

funds (see Arizona & California Railroad Company – Abandonment Exemption – In San Bernardino and Riverside Counties, STB Docket No. AB-1022 (Sub-No. 1X) (STB served Jul. 15, 2009); and (3) supplied only vague and unsubstantiated assertions of its ability to fund, or to obtain funding, to purchase a line and to arrange for operations for a period of two years Union Pacific Railroad Company – Abandonment Exemption – In Lassen County, CA, And Washoe County, NV, STB Docket No. AB-33 (Sub-No. 230X) (STB served Sept. 19, 2008) (“UP – Lassen County”).

As for whether an offeror is bona fide, in the case of an inactive rail line where there is no apparent demand for rail service, the Board has required offerors to submit evidence of a public need for continued rail service. See The Land Conservancy Of Seattle and King County – Acquisition and Operation Exemption – The Burlington Northern and Santa Fe Railway Company, et al., STB Finance Docket No. 33389, et al., slip op. at 14 (“Land Conservancy of Seattle”) (STB served May 13, 1998); cf. CSX Transportation Inc. – Abandonment Exemption – In Glynn County, GA, STB Docket No. AB-55 (Sub-No. 697X), slip op. at 3 (STB served Jul. 9, 2009) (“offerors are reminded that the OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic”); UP – Lassen County, slip op. at 2 (same).

In this case, the Director, in view of 49 CFR § 1152.27(c)(1)(ii)(B), which provides that governmental entities are presumed to be financially responsible (unlike private entities, which must establish their financial responsibility up front), and having at that time no specific evidence to rebut the presumption, accepted the Town’s OFA and found the Town to be a bona fide offeror. ISW has appealed that decision, seeking to show that the presumption relied upon

by the Director is no longer valid and that the Director's Decision should be reversed. The Board granted discovery to allow ISW to supplement its appeal.

Now, with the evidence obtained through the discovery process, ISW is able to supplement its appeal and to show that Poseyville's OFA must be rejected. This new evidence confirms ISW's arguments and provides a basis for reversing the Director's prior acceptance of the OFA. The evidence firmly establishes that Poseyville is *not* financially responsible (it has no money to purchase the Lines; only a vague plan to pursue funding if it decides that the Board-prescribed purchase price is worth the effort), and that it is *not* a bona fide offeror (it has no plans for the preservation of rail service, and there is no demonstrated need). Poseyville, although afforded many opportunities to prove itself committed to the fundamental objectives of the OFA process – the preservation of rail service – has instead demonstrated no genuine commitment to rail service. For these reasons, the Director's Decision should be reversed, Poseyville's OFA rejected in accordance with agency precedent, and the current proceeding put to an end.

III. POSEYVILLE IS NOT FINANCIALLY RESPONSIBLE

Throughout this proceeding, Poseyville has clung to the regulatory presumption of its financial fitness, refusing on various occasions to provide an accounting of its resources or its objectives in pursuing this OFA. The new evidence now firmly shows that the Town is not a financially responsible offeror, and, accordingly, that the presumption of financial responsibility upon which it relies has been fully rebutted. Poseyville admits that it hasn't the money to buy the Lines, adding that it "intends" to work with local and state economic development groups to "identify" grant and loan programs from which the Town might seek the purchase funds.

Response to Request No. 2. Poseyville offers no excuse for its failure to date to pursue the

needed funding, much less its failure to begin the process of “identifying” funding sources.⁹ In fact, Poseyville identifies only one theoretical funding source – Indiana’s IRSF – but its responses to discovery indicate that the Town has not initiated contact with the program’s administrator (Indiana DOT), and thus the Town can offer no assurance that this or any other public funding source can or will deliver the needed cash.

Here, the Lines have been without local traffic for over two years and there is no evidence of an emerging need for rail transportation over the Lines. Under such circumstances, it is hard to believe that any funding source, public or private, would be willing to provide Poseyville with the hoped-for-but-not-yet-pursued purchase price. Not only are Poseyville’s prospects for funding dim in view of current and future traffic prospects, but Poseyville can’t keep its funding story straight. Specifically, in response to ISW’s Request No. 2, Poseyville says it plans to seek “grant and loan programs” to fund the purchase of the Lines. Later, however, in response to Request No. 9, Poseyville disavows any plans to borrow money, stating instead that it would seek only grants “and/or participation from qualified private operators.”

Even assuming Poseyville would pursue only grants and contribution from a private rail operator (if in fact it could attract one), the Town’s financing plan is deeply flawed. First, as indicated above, Poseyville appears to be utterly unaware of the prospects of securing the necessary grants, because it admits that it has not yet even begun to “identify” grant sources, let alone apply for funds. Second (and again as indicated above), it is hard to believe that the Lines, with no current traffic prospects, would warrant any grant award. And third, there is no chance that a private, for-profit rail operator would be willing to contribute some or the entire purchase

⁹ Poseyville’s lackadaisical approach to obtaining purchase funds is disconcerting to say the least, especially given the supposed expedited nature of the OFA process. The Town’s lack of effort shows that Poseyville has no regard to the statutory objectives of the OFA process, and that it cares nothing for the added burdens that its dilatory behavior impose upon ISW and the Board alike.

price for Lines that have no current traffic prospects, unless, of course, the purported rail “operator” had as its principal objective securing a stake in the Lines’ salvageable assets.

Poseyville acknowledges that it has “received informal inquiries” from third parties regarding funding the Lines’ purchase (Response to Request No. 7), but it does not elaborate upon the nature of those inquiries or identify the third parties that have contacted the Town, although it very clearly should have. Poseyville’s vague and evasive answers here and elsewhere in its responses to Board-ordered discovery suggests either that there is more to Poseyville’s so-called “informal” (or behind the scenes) efforts than it is willing to disclose, or, just the opposite, that the Town is guilty of an egregious lack of essential groundwork.

It is true that in other OFA cases, public and quasi-public offerors have shown themselves to be financially responsible by providing evidence of public funding commitments, or, at the very least, of ongoing efforts to finalize such funding commitments. See, e.g., CSX Transportation, Inc. – Abandonment Exemption – In Guernsey and Noble Counties, OH, STB Docket No. AB 55 (Sub-No. 569X) (STB served Jun. 24, 1999) (local community improvement corporation’s OFA allowed to proceed based on evidence of funding through a grant commitment from the Ohio Rail Development Commission); Consolidated Rail Corporation – Abandonment – Between Corry and Meadville, In Erie and Crawford Counties, PA, Docket No. AB-167 (Sub-No. 1139) (ICC served Oct. 5, 1995) (regional rail authority’s OFA allowed to proceed where rail authority showed it could fund the \$2.9 million purchase of the line through a previously-awarded state grant of \$1.9 million and a third-party commitment for the balance); Consolidated Rail Corporation – Abandonment – Between Upper Sandusky and Dunkirk, In Hardin and Wyandot Counties, OH, Docket No. AB-167 (Sub-No. 1116) (ICC served Aug. 25, 1993) (port authority, although presumed financially responsible, proved its financial responsibility by showing that the necessary funding would come from a combination of a

department of transportation commitment, a community development block grant awaiting final approval, and a bank loan, which would be serviced by the local communities and a shipper).

In this case, however, Poseyville has made no such showing and there are no funding commitments or even ongoing efforts to obtain such commitments. As discussed above, Poseyville has demonstrated no ongoing effort to acquire the necessary funding, admitting that it has not yet begun the task of even “identifying” potential funding sources, let alone securing an actual funding commitment. Indeed, ISW’s research has not disclosed any prior OFA case where the offeror proved its financial responsibility by stating that it would depend upon unidentified grants or loans for which it had not yet applied. In the end, the record clearly shows that Poseyville lacks the funds to purchase the Lines, and that it has not yet even undertaken the effort to identify and secure funds through public and private sources. Accordingly, given the above-cited cases and the new evidence obtained through the discovery process, it is clear that the Town is not a financially responsible offeror and the Board must reverse the Director’s prior acceptance of the OFA.

IV. POSEYVILLE’S OFFER IS NOT BONA FIDE AS THERE IS NO EVIDENCE OF A PUBLIC NEED FOR RAIL SERVICE

In cases such as Land Conservancy of Seattle, the Board has very clearly admonished would-be offerors seeking to acquire long-inactive lines through the OFA process to submit evidence of the public need for continued rail service. Here, not only does Poseyville lack access to funds to purchase the Lines, but it has not now nor ever shown that its OFA efforts are in the interest of meeting any current or future public need for rail service. When questioned about the Line’s *future* prospects in Request No. 28, Poseyville responded with the following non-answer: “Not applicable. There are no active shippers on the line segment subject to this filing.” Response to Request No. 28. And, in response to Request No. 30 concerning the Town’s plans

for the operation of the Lines, the Town offers the following evasive, yet ultimately telling, remark: “Not applicable. The Town has not developed a formal plan for operation.”

Taken together, Poseyville’s responses to Requests Nos. 28 and 30 indicate that – (1) Poseyville sees no realistic prospects for the nearer-term restoration of service on the Lines; (2) Poseyville has made no effort to determine what it would cost to operate the Lines or at what traffic levels it would be remunerative for a third party to do so; and (3) Poseyville has undertaken no serious assessment of the obligations it would incur if it were to acquire the Lines through the OFA process. Poseyville’s entire case is that, although its OFA lacks merit under the statutory and regulatory standards, municipal prerogative should take precedence, and that the Board should relax its standards as much as is necessary (including granting exemptions from the applicable statute) to facilitate Poseyville’s efforts to acquire the property through an OFA, even in the absence of any clear justification for continuing the process.

By ordering discovery, the Board made clear that it, too, is interested in seeing whether or not Poseyville “is pursuing an OFA for the purpose of providing freight rail service on the lines” (February 11 Decision at 4), and Poseyville’s responses to such discovery do nothing but underscore Poseyville’s lack of plans for the future provision of rail service. Simply put, if Poseyville were truly genuine in its OFA efforts, then that would be reflected in its efforts to obtain the necessary purchase funds, its assessment of the task at hand (and the cost) to preserve rail service, and its work to design an operating plan that would justify the sizeable capital investment associated with the acquisition of the Lines. But Poseyville has done none of this, and, through its too-casual attitudes toward rail service restoration (and toward everything else in this proceeding), the Town has failed to demonstrate a genuine effort to meet a public need for rail service, especially where *there is no such public need*. For these reasons, Poseyville is neither financially responsible nor a bona fide offeror, and its OFA must be rejected.

CONCLUSION

The OFA process was designed by Congress seeks to strike an important balance between legitimate efforts to preserve rail service on lines slated for abandonment on the one hand, and the financial interests of rail carriers seeking to recoup the value of the rail assets to be abandoned without undue delay on the other. The OFA statute and its legislative history clearly require OFA proceedings to be conducted expeditiously, and that the process accommodate only legitimate – and funded – efforts to preserve rail service. Unfortunately, given the existence of the presumption of financial responsibility afforded to public entities and the very short time frames involved, the Director did not have the benefit of the newly discovered evidence presented here. Likely if she had, she would have rejected the OFA.¹⁰ Regardless, as this case now stands, continuing the OFA process in the face of current evidence would undercut any sense of balance or fairness. It is time for this hollow OFA process to be ended swiftly.

Although Poseyville has not been fully forthcoming, enough is now known to end this proceeding. The Board now knows for certain that Poseyville lacks the money to buy the Lines even at its own terribly deflated net liquidation value estimate, that it has not identified any existing or future need for rail service (much less developed a plan to provide such service), and that it has no “formal” relationship with a third party with an interest in the OFA process or the Lines. The facts show that Poseyville is neither financially responsible nor a bona fide offeror. For these reasons, and to prevent further abuse of its processes and the unnecessary expenditure of agency resources, the Board should reverse the Director’s Decision accepting Poseyville’s

¹⁰ Given the recent history of several cases where an OFA has been accepted, but it has later been determined that the offeror was either not financially responsible or the offer was not bona fide, the Board should consider re-examining its processes and procedures. It should be possible to develop a process whereby a party has an opportunity to challenge an offeror’s financial fitness (and do away with presumptions afforded public entities or to allow time for parties to challenge that presumption) and the offer’s bona fides before the Director accepts the OFA.

OFA, reject Poseyville's OFA forthwith, and terminate the proceeding with prejudice, so that ISW can move forward with its plans to salvage its unused and unneeded rail assets.

Respectfully submitted,



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Attorneys for Indiana Southwestern
Railway Company

February 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Supplement to ISW's Appeal by mailing copies of the same to all parties via prepaid first class mail to all parties of record in these proceedings or by more expeditious means of delivery.

Dated at Washington, D.C. this 25th day of February, 2011.



Robert A. Wimbish
Attorney for Indiana Southwestern
Railway Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

INDIANA SOUTHWESTERN RAILWAY)
CO. -- ABANDONMENT EXEMPTION --) DOCKET NO. AB-1065X
IN POSEY AND VANDERBURGH)
COUNTIES, IN)

RESPONSE TO REQUESTS FOR DISCOVERY

THE TOWN OF POSEYVILLE, INDIANA
20 South Cale Street
P.O. Box 194
Poseyville, IN 47633

Offeror

WILLIAM H. BENDER
Town of Poseyville Attorney
20 South Cale Street
P.O. Box 194
Poseyville, IN 47633

Attorney for Offeror

DATE FILED: February 18, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

INDIANA SOUTHWESTERN RAILWAY)
CO. -- ABANDONMENT EXEMPTION --) DOCKET NO. AB-1065X
IN POSEY AND VANDERBURGH)
COUNTIES, IN)

RESPONSE TO REQUESTS FOR DISCOVERY

Pursuant to the Board's decision served February 11, 2011, THE TOWN OF POSEYVILLE, INDIANA (the Town) hereby files this Response to Discovery Requests submitted by Indiana Southwestern Railway Co. (ISW). The Town's Responses have been verified by an authorized representative of the Town. See Appendix 1.

RESPONSES

Request No.1. Produce the Town's annual budgets and balance sheets for 2009, 2010, and 2011, and any other records for 2009, 2010, 2011 identifying combined annual Town income, expenses, and disbursements.

See attached copy of the Town of Poseyville Statement of Receipts, Disbursements, Cash, and Investment Balances for 2009. Said report for 2010 is not yet completed, but will be provided upon completion that is expected to be within the next thirty (30) days. The Town does not yet have a finalized budget for 2011, and when one is available will be provided. There are no significant variances in revenue and expenses for 2009, 2010, and 2011.

Request No.2. Does the Town possess in its accounts sufficient discretionary funds to purchase the Lines at the price postulated in the Town's OFA? If the Town does not currently possess such funds, identify the source(s) of funds that the Town would seek to obtain to pay the Lines' purchase price.

No. The Town intends to work with local and state economic development groups such as the Posey County Economic Development Partnership, the Economic Development Coalition of Southwest Indiana, and the Indiana Economic Development Corporation (IEDC) to identify grant and loan programs available for critical infrastructure projects tied to economic development once the purchase price has been established through the OFA process. The Town may consider formation of a port authority allowed under state law in order to qualify for additional grant and financing programs including the Industrial Rail Service Fund (IRSF) administered by the Indiana Department of Transportation (INDOT). ISW should be familiar

with the IRSF since it has received nearly \$411,000 over the last ten years in spite of providing no discernable benefits in new job creation or investment. Other communities in the state of Indiana have approached preservation of rail service in a similar manner and the Town anticipates leveraging that experience as a guide to preserve rail service to Poseyville.

Request No.7. Has any third party contacted the Town proposing to supply all or any of the funds necessary to purchase the Lines and/or to pursue the OFA process? If yes, identify-

- (a) the third party(ies);**
- (b) the amount of money that party has proposed or committed to supply; and**
- (c) the terms upon which such purchase price and/or funding for the OFA process has been offered.**

The Town has received informal inquiries from around the U.S. but has not entertained any formal written offers. In order to consider any possible relationship, the town would have to issue a Request for Proposals (RFP) and advertise publicly in order to solicit third parties to participate in either funding and/or operating the railroad. Once an RFP is advertised, any qualified operator could submit a proposal including ISW. The Town has not taken any action to release an RFP at this time.

Request No.8. Provide all documents responsive to Request No.7, including, but not limited to, written proposals, meeting minutes, term sheets, proposal summaries, and all written communications with any third parties seeking to cooperate with the Town in the proposed purchase of the Lines through the OFA process.

The Town has received no formal written proposals since no RFP has been issued. See response to Request No.7.

Request No.9. Does the Town plan to borrow money to purchase the Lines?

The Town has no current plan to borrow money to purchase the Lines. The Town would likely seek funding through grants (See response to Request No. 1) and/or participation from qualified private operators (see response to Request No. 7).

Request No.10. If the answer to Request No.9 is anything other than in the negative, identify the lending source(s) from which the Town would draw the necessary funds, and produce any and all documents establishing the Town's ability to draw from such lending source(s) (including, but not limited to, loan agreements and/or lines of credit), and showing the amounts available to the Town from such lending source(s).

Not applicable.

Request No. 23. Has the Town discussed with a third party(ies) the possible future disposition of any or all portions of the Lines in the event that the Town were to acquire the Lines through the OFA process, including any plans to salvage any of the rail and other track material along the Lines? Ifso, identify the third party(ies), the Town and/or third party plans for future disposition and salvage, and provide all documents between the Town and such third party(ies) relating to any such future disposition plans.

Not applicable. The Town has not developed any formal plans or solicited proposals through a public bidding process.

Request No. 28. Identify all shippers that the Town or any third parties assisting the Town with the subject OFA have contacted concerning possible future service on the Lines, and, in so doing, provide the commodities all such shippers would plan to ship over the Lines and the projected annual carloads each such shipper would tender for shipment over any portion of the Lines.

Not applicable. There are no active shippers on the line segment subject to this filing.

Request No. 30. Has the town prepared, or has any third party provided the Town with, a plan for the operation of the Lines and/or the provision of service over the Lines in the event that the Town were to acquire the Lines? If so, provide a copy of each such plan.

Not applicable. The Town has not developed a formal plan for operation.

Request No. 31. Identify each company that engages in the business of track salvage and/or track component resale (such as rails, ties, tie plates, scrap steel, and fasteners, etc.) that has contacted or has made any proposal to the Town in connection with the subject rail line abandonment proceeding and/or the Town's OFA.

Not applicable. The Town has not solicited proposals for track salvage. Any written proposal would have to be solicited through a public bidding process.

Respectfully submitted,



THE TOWN OF POSEYVILLE, INDIANA
20 South Cale Street
P.O. Box 194
Poseyville, IN 47633

Offeror

Handwritten signature of William H. Bender in cursive script.

WILLIAM H. BENDER
Town of Poseyville Attorney
20 South Cale Street
P.O. Box 194
Poseyville, IN 47633

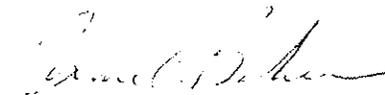
Attorney for Offeror

DATE FILED: February 18, 2011

VERIFICATION

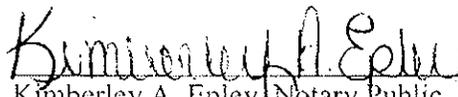
STATE OF INDIANA)
)
COUNTY OF POSEY)

Bruce C. Baker, being duly sworn, states that he has knowledge of the foregoing responses to discovery requests, and that those responses are true and correct.



**Bruce C. Baker, Authorized Representative of
the Town of Poseyville, Indiana**

SUBSCRIBED and SWORN to before me this 18th day of February, 2011.

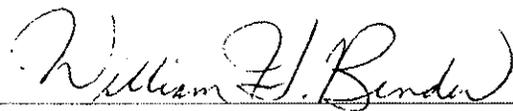


Kimberley A. Epley, Notary Public.
Resident of Posey County, Indiana
Commission Expiration: September 11th, 2016



CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011, I served the foregoing document, Response to Requests For Discovery, by electronic mail, on the attorneys for Indiana Southwestern Railway Co., William A. Mullins and Robert A. Wimbish, Baker & Miller, 2401 Pennsylvania Avenue, Suite 300, Washington, DC 20037, and on Ms. Venetta Keefe, Senior Rail Planner, Indiana Department of Transportation, 100 North Senate Avenue, Room N955, Indianapolis, IN 46204.

A handwritten signature in black ink that reads "William H. Bender". The signature is written in a cursive style and is positioned above a horizontal line.

William H. Bender
Town of Poseyville Attorney

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CTAR-1
PART 1 - TRANSACTION REPORT
FOR ANNUAL CITY/TOWN FINANCIAL REPORT
STATEMENT OF RECEIPTS, DISBURSEMENTS, CASH BALANCES, AND
INVESTMENTS BALANCES (INCLUDES UTILITIES)

RECNO TAX BD FUND NO CODE # FUND NAME FUND # FUND TYPE FUND CODE BEG. BALANCE JANUARY 1 RECEIPTS DISBURSEMENTS END BALANCE DECEMBER 31 INVESTMENTS TOTAL CASH & INVESTMENTS DECEMBER 31

RECNO	TAX BD	FUND NO	CODE #	FUND NAME	FUND #	FUND TYPE	FUND CODE	BEG. BALANCE JANUARY 1	RECEIPTS	DISBURSEMENTS	END BALANCE DECEMBER 31	INVESTMENTS	TOTAL CASH & INVESTMENTS DECEMBER 31
2		5	0101	RIVERBOAT TAX SHARING	242			22798.31	19085.97	21278.94	20585.34	0.00	20585.34
3		0101	GENERAL		101			1946.18	274377.97	409633.11	-133308.96	0.00	-133308.96
4		0210	LAW ENFORCEMENT GRANT		210			256.95	0.00	0.00	256.95	0.00	256.95
5		0212	COIT/COUNTY OPTION TAX		103			21213.91	19784.13	0.00	40998.04	0.00	40998.04
6		0280	ST RESURFACING DEBT SERV		307			12186.51	31645.61	43846.25	-14.13	0.00	-14.13
7		0300	PAYROLL		701			0.00	265942.77	265942.77	0.00	0.00	0.00
8		0300	PAYROLL MEDICAL DED		702			5.70	2.17	0.00	7.87	0.00	7.87
9		0302	PAYROLL EMPLOYEE DED		708			11.78	20523.64	20583.44	-48.02	0.00	-48.02
10		0302	PAYROLL FEDERAL WITHHOL		731			0.00	35470.47	35470.47	0.00	0.00	0.00
11		0302	PAYROLL FICA WITHHOLDIN		732			0.00	46966.45	46966.45	0.00	0.00	0.00
12		0302	PAYROLL MEDICARE WITHHO		733			0.00	10899.62	10899.62	0.00	0.00	0.00
13		0302	PAYROLL STATE WITHHOLDI		734			1247.87	15521.78	15099.80	1669.85	0.00	1669.85
14		0302	PAYROLL PERF WITHHOLDI		736			6596.93	32948.14	32122.36	7422.69	0.00	7422.69
15		0650	EDC ECONOMIC DEV. COM		650			18777.90	0.00	0.00	18777.90	0.00	18777.90
16		0706	L R S		202			18181.81	5086.56	11000.00	12268.19	0.00	12268.19
17		0708	MVH		201			439.30	94915.79	76704.32	18650.77	0.00	18650.77
18		1153	LAW ENFORCE CONT. ED		208			277.38	650.00	0.00	3367.38	0.00	3367.38
19		1190	CUMULATIVE FIRE		402			1623.44	1350.00	0.00	2973.44	0.00	2973.44
20		1190	RAINY DAY		448			0.00	7801.35	0.00	7801.35	0.00	7801.35
21		1301	PARK		204			3073.49	2571.43	4453.84	-1191.08	0.00	-1191.08
22		2120	CEMETERY		205			213.41	4366.96	4950.10	-368.73	0.00	-368.73
23		2120	CEMETERY PERM MAINT FUND		206			825.00	850.00	38.60	1636.40	0.00	1636.40
24		2375	CUM CAP IMPROVE		401			13771.79	3639.74	0.00	17411.53	0.00	17411.53
25		2391	CUM CAP DEVELOPMENT		435			7647.42	40748.26	9615.60	38780.08	0.00	38780.08
26		4000	FIRE FIGHTING GRANT		403			0.01	0.00	0.00	0.01	0.00	0.01
27		5103	COMMUNITY CENTER		501			3257.39	35115.00	1825.00	36547.39	0.00	36547.39
** Subtotal **								136792.28	970243.83	1010430.69	96605.42	0.00	96605.42
** UTILITIES													
31		6002	GAS OPERATING		615			22783.76	483358.50	486169.72	19972.54	10000.00	29972.54
32		6010	GAS CASH RESERVE		619			31571.21	3000.00	0.00	34571.21	0.00	34571.21
33		6011	GAS METER DEPOSIT		617			9740.00	2750.00	1850.00	10640.00	0.00	10640.00
34		6201	SEWAGE OPERATING		606			150959.70	353761.47	393021.75	111699.42	0.00	111699.42
35		6202	SEWAGE DEPRECIATION		609			16276.56	10500.00	0.00	26776.56	0.00	26776.56
36		6209	SEWAGE DEBT SER. RES.		608			121493.71	8850.41	60.00	130284.12	0.00	130284.12
37		6281	SEWAGE BOND & INT		607			48535.04	134948.86	129629.54	53854.36	0.00	53854.36

Asst. Dir.:

CIAR-1
PART 1 - TRANSACTION REPORT
FOR ANNUAL CITY/TOWN FINANCIAL REPORT
STATEMENT OF RECEIPTS, DISBURSEMENTS, CASH BALANCES, AND
INVESTMENTS BALANCES (INCLUDES UTILITIES)

REC NO	TAX BD CODE	FUND NAME	FUND #	FUND TYPE	FUND CODE	BEG. BALANCE JANUARY 1	RECEIPTS	DISBURSEMENTS	END. BALANCE DECEMBER 31	INVESTMENTS	TOTAL CASH & INVESTMENTS DECEMBER 31
UTILITIES											
38	6503	WATER OPERATING	601			35421.52	293024.45	328352.39	93.58	0.00	93.58
39	6504	WATER CONSTRUCTION FUND	611			0.00	593880.00	168750.00	425130.00	0.00	425130.00
40	6508	WATER DEPRECIATION	603			11801.03	24600.00	4154.50	32246.53	25000.00	57246.53
41	6509	WATER METER DEPOSIT	604			7740.00	2000.00	1850.00	7890.00	0.00	7890.00
42	6513	WATER DEBT SER. RES.	612			3875.70	0.00	0.00	3875.70	50000.00	53875.70
43	6580	WATER BOND & INT.	602			4504.94	50470.00	5120.00	49854.94	0.00	49854.94
** Subtotal **						464703.19	196143.69	1516957.90	906888.98	85000.00	991888.98
** LESS: **						601495.47	2931387.52	2529388.59	1003494.40	35000.00	1088494.40
** Subtotal **											
OTHER											
1	5206	TRANSFERS IN	999			0.00	0.00	0.00	0.00	0.00	0.00
28	5500	INVESTMENT SALES	999			0.00	-566613.08	0.00	0.00	0.00	0.00
29	6000	TRANSFERS OUT	999			0.00	-16606.85	0.00	0.00	0.00	0.00
30	7000	INVESTMENT PURCHASES	999			0.00	0.00	-409281.15	0.00	0.00	0.00
44			999			0.00	0.00	0.00	0.00	0.00	0.00
** Subtotal **						0.00	-683219.93	-409281.15	0.00	0.00	0.00
*** Total ***						601495.47	2248167.59	2120107.44	1003494.40	85000.00	1088494.40