

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LA SALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

May 20, 2015

238430

ENTERED

Office of Proceedings

May 20, 2015

Part of Public Record

By e-filing

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 Request for Admissions for filing with the Board in the above referenced matter.

Respectfully submitted,

*Tom McFarland*

*Rachel Arndt*  
RACHEL ARNDT  
PETERSON WAGGONER & PERKINS, LLP  
125 E. Tenth Street  
Rochester, IN 46975  
(574) 223-4292  
*rachel@peterson-waggoner.com*

THOMAS F. MCFARLAND  
THOMAS F. MCFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
*mcfarland@aol.com*

*Attorneys for the Town of  
North Judson, Indiana*

*TMcF:mg:\1628\efSTB3*

cc: John D. Heffner, Esq., *by first-class, U.S. mail and e-mail*  
Moira J. Chapman, Esq., *by first-class, U.S. mail and e-mail*  
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 REQUEST FOR ADMISSIONS**

---

TOWN OF NORTH JUDSON, INDIANA  
P.O. Box 56  
North Judson, IN 46366

Respondent

RACHEL ARNDT  
PETERSON WAGGONER & PERKINS, LLP  
125 E. Tenth Street  
Rochester, IN 46975  
(574) 223-4292  
rachel@peterson-waggoner.com

THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

Attorneys for Respondent

DATE FILED: May 20, 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 REQUEST FOR ADMISSIONS**

---

The Town of NORTH JUDSON, INDIANA (the Town) hereby replies in opposition to the Motion to Compel (Motion) filed by Chesapeake & Indiana Railroad Company, Inc. (CKIN) on May 11, 2015.

**DECISIONAL STANDARDS**

Discovery is available “regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding.” 49 C.F.R. § 1114.21(a)(1). Requests for admission may address “the truth of any matters within the scope of § 1114.21.” 49 C.F.R. § 1114.27(a). That is to say that to be discoverable, requests for admission must be relevant to the subject matter involved in a proceeding.

Whether a matter is relevant to the subject matter of a proceeding depends on the nature of the proceeding. The subject matter of the proceeding at hand is an application for adverse discontinuance of rail service in which the owner of a rail line is replacing the incumbent operator upon expiration of the operating agreement between them. Inasmuch as rail service

would continue over the line regardless of whether that application were to be granted,<sup>17</sup> the factors 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) are circumscribed. Essentially, such an application is to be granted unless it is shown that shippers on the line are likely to be seriously harmed as a result of the rail service 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 (FD No. 32049, renumbered AB-379X, decision served Nov. 4, 1992):

We have considered potential harm to shippers and the community. If we grant the adverse discontinuance, Centennrail's (the replacement operator) service will continue. In these circumstances, we focus on whether allowing MACO (the incumbent operator) to discontinue operating will result in a diminution of service having a serious adverse impact on shippers and the community." (at \*13)

. . . Our task is to determine whether MACO's discontinuing operations would harm shippers and the community. We cannot find that it will. Participating shippers either support or are neutral about MACO's discontinuing service. All CCRA board members (owner) want MACO removed. The record does not show that allowing discontinuance of operations will result in significant diminution of service to shippers. . . Consequently, we find that there is no public interest in requiring that MACO continue to be permitted to operate the line." (at \*14-15)

Correspondingly, matters that are relevant to an adverse discontinuance of that nature are also limited to whether a grant of the application would result in a diminution of service that would have a serious adverse impact on shippers and the community. CKIN's Motion is to be decided with those legal standards in mind.

---

<sup>17</sup> If the application were to be denied, the incumbent operator would continue to provide the service. If the application were to be granted, the replacement operator would provide the service.

## ARGUMENT IN OPPOSITION TO THE MOTION

### I. Request for Admission No. 1

This Request seeks an admission that the Town has adopted an Indiana statutory provision that allegedly would require the Town to issue Requests for Proposals (RFPs) in the process of selecting a replacement operator for the Rail Line. The contention seems to be that if the RFP process is required, it may not be completed before expiration of the Operating Agreement between the Town and CKIN, with the alleged result that rail service would terminate upon a grant of the application and eviction of CKIN from the Rail Line (Motion at 3). There is also a contention that without the RFP process, the Town may select a replacement operator lacking in rail operating expertise, which is also alleged to result in cessation of rail service (*id.*, at 3-4).

This Request is not relevant to whether discontinuance of CKIN's rail service is permitted or required by PC&N because the process by which a replacement operator is selected for the Rail Line is governed by Indiana Law, over which the Board does not have jurisdiction. CKIN acknowledged as much when it stated (Motion at 3) that "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" (emphasis added).

Assuming solely for the sake of argument that this Request is within the Board's jurisdiction, the Request, nevertheless, is not relevant because interruption of rail service would not occur regardless of whether an RFP process is used to select a replacement operator. The Town is committed to seek ejection of CKIN from the Rail Line only if and when a Board decision granting the application for adverse discontinuance becomes effective and a replacement operator is ready to commence rail operations. Specifically, the Town will seek conditions to a grant of the application that were recently imposed by the Board in *Paulsboro Refining Co.* --

*Adverse Aban. -- in Gloucester County, NJ*, 2014 WL 6774680 (Docket No. AB-1095 [Sub-No. 1], decision served Dec. 2, 2014), to ensure that there will be no harmful interruption of rail service in the transition from incumbent operator to replacement operator, viz at \*6:

2. SMS (incumbent operator) is directed to cooperate with PRC (owner), Savage (replacement operator), and the Interchange Carriers in an orderly transition of operations and service before it stops operating as a rail carrier on this Line.”

3. The abandonment authority will not become effective until PRC and/or its switching operator notify the Board that they have executed all necessary agreements with the Interchange Carriers.”

In light of the foregoing, there is not the slightest legal basis for CKIN’s wishful thinking that the application should be viewed as seeking abandonment rather than discontinuance of service (Motion at 4).

## **II. Request for Admission Nos. 2-5**

These Requests seek admissions that funding for the Town’s purchase of the Rail Line in 2004 was provided by Indiana Department of Transportation (Request No. 2), Porter County (Request No. 3), LaPorte County (Request No. 4), and Starke County (Request No. 5). The contention seems to be that in view of that funding, the Town may not be the real party in interest and may not have standing to file the application for adverse discontinuance.

These Requests are not relevant to whether discontinuance of CKIN’s rail service is permitted or required by PC&N because it is a matter of Indiana contract law, over which the Board does not have jurisdiction, whether funding of a purchase by non-parties to a railroad operating agreement displaces the sole party to the agreement as the real party in interest. Any contention under federal law, that the owner in title to a rail line does not have a sufficient interest and standing to file an application for adverse discontinuance of an operator’s rail service over the line, would be frivolous on its face.

**CONCLUSION AND REQUESTED RELIEF**

WHEREFORE, for the reasons stated, the Motion to Compel should be denied.

Respectfully submitted,

TOWN OF NORTH JUDSON, INDIANA  
P.O. Box 56  
North Judson, IN 46366

Respondent

Rachel Arndt  
RACHEL ARNDT <sup>TM</sup>  
PETERSON WAGGONER & PERKINS, LLP  
125 E. Tenth Street  
Rochester, IN 46975  
(574) 223-4292  
rachel@peterson-waggoner.com

Thomas F. McFarland  
THOMAS F. McFARLAND  
THOMAS F. McFARLAND, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204  
(312) 201-9695 (fax)  
mcfarland@aol.com

Attorneys for Respondent

DATE FILED: May 20, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2015, I served a copy of the foregoing Reply in Opposition to Motion to Compel Responses to Request for Admissions by e-mail and first-class, U.S. mail, postage prepaid, on the following:

John D. Heffner, Esq.  
Strasburger & Price, LLP  
1025 Connecticut Ave., N.W.  
Suite 717  
Washington, DC 20036  
*john.heffner@strasburger.com*

Moira J. Chapman, Esq.  
Strasburger & Price, LLP  
1025 Connecticut Ave., N.W.  
Suite 717  
Washington, DC 20036  
*moira.chapman@strasburger.com*

Thomas F. McFarland

Thomas F. McFarland