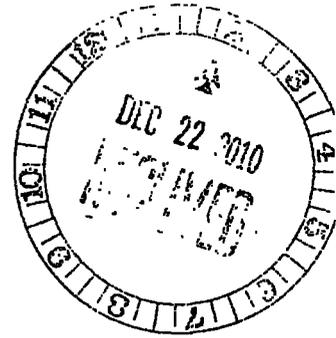


TOWN OF POSEYVILLE

Office of The Clerk-Treasurer

20 S. Cale Street
P. O. Box 194 - Poseyville, IN 47633
812-874-2211

December 21, 2010



*By overnight mail
(original + 10 copies)*

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

FEE RECEIVED
DEC 22 2010
SURFACE
TRANSPORTATION BOARD

FILED
DEC 22 2010
SURFACE
TRANSPORTATION BOARD

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

Dear Ms. Brown:

228516

I was advised by representatives of the Board that the Offer of Financial Assistance (OFA) received by the Board on December 20 was required to be accompanied by a check in the amount of \$1,500 for a filing fee, and that if the Town seeks waiver and refund of the filing fee as a Local Government Entity, the Town is required to file a Petition for Waiver of the filing fee.

The applicable Board regulation, 49 C.F.R. § 1002.2(e)(1), appears to provide that filing fees are already waived for Local Governmental Entities such as the Town of Poseyville, viz:

Filing fees are waived for an application or other proceeding which is filed by a . . . local governmental agency . . .

Nevertheless, the Town hereby respectfully requests a waiver of the filing fee. If the Town were to acquire the rail line pursuant to its OFA, the Town undoubtedly would contract with an experienced rail operator for operation of the rail line. There is no intent that the Town become an active operator of a rail line by virtue of its OFA. Therefore, a filing fee that is designed to apply to a private rail operator should not be applied to a Local Government Entity who will not operate a rail line.

Based on the foregoing, the filing fee should be waived and the Town's check should be returned or refunded.

ENTERED
Office of Proceedings

DEC 22 2010

Part of
Public Record

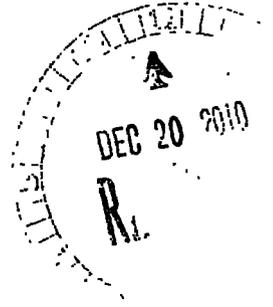
Respectfully submitted,

William H. Bender
Town Attorney

TOWN OF POSEYVILLE

Office of The Clerk-Treasurer

20 S. Cale Street
P. O. Box 194 - Poseyville, IN 47633
812-874-2211



December 17, 2010

*By overnight mail (Monday delivery)
(original + 10 copies)*

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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

Dear Ms. Brown:

Hereby transmitted for filing with the Board in the above proceeding are the original and 10 copies of an Offer of Financial Assistance in behalf of the Town of Poseyville, Indiana.

No filing fee accompanies the Offer of Financial Assistance because the Town of Poseyville, Indiana is a Local Governmental Entity and, pursuant to 49 C.F.R. § 1002.2(c)(1), "(f)iling fees are waived for an application or other proceeding which is filed by a . . . local government entity."

Sincerely,

A handwritten signature in cursive script that reads "William H. Bender".

William H. Bender
Town of Poseyville Attorney

cc: *(by overnight mail, Monday delivery)*
William W. Mullins, Esq.
Robert A. Wimbish, Esq.
Ms. Venetta Keefe

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

OFFER OF FINANCIAL ASSISTANCE

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: December 20, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

OFFER OF FINANCIAL ASSISTANCE

Pursuant to 49 U.S.C. § 10904(c) and 49 C.F.R. § 1152.27(c)(2)(iii), THE TOWN OF POSEYVILLE, INDIANA (the Town) hereby offers financial assistance in the form of purchase of the entire rail line involved in the above proceeding, i.e., between (1) Milepost 227.5 at Poseyville and Milepost 240.2 near German Township; and (2) Milepost 277.5 at Cynthiana and Milepost 282.0 at Poseyville, a total distance of 17.2 miles in Posey and Vanderburgh Counties, IN (the Rail Line). The Town offers a purchase price of \$376,600. The Town submits the following in support of its offer.

**THERE IS A REASONABLE EXPLANATION FOR THE DISPARITY
BETWEEN THE AMOUNT OFFERED AND THE OWNER'S
VALUATION OF THE RAIL LINE**

In accordance with 49 U.S.C. § 10904(c), the Town hereby explains the disparity between the amount it has offered to purchase the rail line and the rail carrier's valuation (asking price) for the Line.

Indiana Southwestern Railway Co. (ISW) values the Rail Line at \$3,884,580. *See* Letter dated December 8, 2010 from counsel for ISW to counsel for the Town. However, backup materials furnished by ISW claim a value of \$3,812,580, consisting of \$2,804,580 for track

materials and \$1,008,000 for land, an amount that is \$72,000 less than the asking price communicated to the Town.

The Town's offer to purchase the Rail Line for \$376,600 is based on a net salvage value of track materials of \$136,600 and a land value of \$240,000. The Town emphasizes, however, that ISW failed to furnish requested title documentation for the land in the Rail Line right-of-way, and the Town has not completed its own investigation of title to that land and an appraisal of land value. Therefore, the Town reserves the right to request the Board to determine a land value of less than \$240,000 if the Town's investigation were to support such a lesser value.

There are multiple explanations for the disparity between the purchase price offered and the asking price, i.e.,

A. Value of Track Materials

- (1) ISW contends that the rail in the Line is mostly 112-pound, and that all rail in the Line is of relay quality. The Town will show that the majority of rail in the Line is 90-pound, most of which is not of relay quality.
- (2) ISW contends that there are 4,000 tons of rail and OTM in the Line. The Town will show that actual metal tonnage is considerably less.
- (3) ISW contends that rail and OTM in the Line has an average value of \$620 per ton. The Town will show that such values are much lower.
- (4) ISW contends that 50 percent of the crossties in the Line are of relay quality, with a value of \$10 per tie (No. 2 relay) and \$14.50 per ton (No. 1 relay). The Town will show that a substantially lesser percentage of crossties in the Line are of relay quality, and that the relay unit values of crossties are less than claimed by ISW.

- (5) ISW contends that ballast in the Line has a value of \$150,000. The Town will show that such ballast has no salvage value.

B. Land Value

- (1) ISW contends that there are 160 acres of land in the Rail Line right-of-way, but its own workpapers show that it calculated less than 154 acres.
- (2) ISW failed to provide title information that was requested by the Town. ISW's workpapers do not contain any information regarding title to the right-of-way land. The amount offered by the Town is based on ISW having marketable fee title to all land in the right-of-way, but the Town reserves the right to lower the amount offered for land if and when there are proceedings for determination of the Line's net liquidation value if the Town's investigation reveals that some or all of the land is not held in fee title by ISW.
- (3) ISW contends that most of the land in the right-of-way has a value of \$6,000 per acre, and the remaining land has a value of \$3,000 per acre, but there is no support for either such valuation. The Town's offer is based on a land value of \$1,500 per acre.

The Town is prepared to submit evidence to support its valuation of rail and other track material, crossties, removal-transportation-restoration costs, and unit valuation of land. If negotiation for purchase of the Rail Line were to be unsuccessful, the Town would be prepared at that time to submit evidence to support total land acreage, and acreage held in marketable fee title.

THE TOWN IS FINANCIALLY RESPONSIBLE

As a Governmental Entity, the Town is presumed to be financially responsible. *See* 49 C.F.R. § 1152.27(c)(ii)(B).

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should find that the Town of Poseyville, Indiana is a financially responsible person who has offered financial assistance to permit rail service to be continued on the Rail Line. Based on that finding, the Board should postpone the effectiveness of the exemption for abandonment of that Rail Line pending further proceedings under 49 U.S.C. § 10904.

Respectfully submitted,

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

Offeror



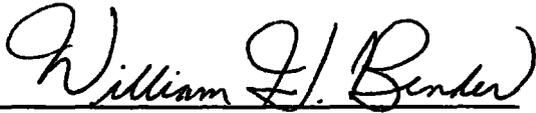
WILLIAM H. BENDER
Town of Poseyville Attorney
20 South Cale Street
P.O. Box 194
Poseyville, IN 47633

Attorney for Offeror

DATE FILED: December 20, 2010

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2010, I served the foregoing document, Offer of Financial Assistance, by overnight mail, Monday delivery, 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.



William H. Bender