

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

WILLIAM A. MULLINS

(202) 663-7823 (Direct Dial)
E-Mail: wmullins@bakerandmiller.com

December 30, 2010

VIA HAND DELIVERY

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:

Pursuant to the Surface Transportation Board's procedures at 49 C.F.R. §§ 1011.2(a)(7) and 1152.27(e)(2) governing appeals of initial decisions by the Board's Director of the Office of Proceedings finding that an offer of financial assistance satisfies the standards of 49 U.S.C. § 10904, enclosed are an original and 11 copies of the an Appeal and Motion To Hold In Abeyance ("Appeal and Motion") filed by Indiana Southwestern Railway Co. in the above noticed proceeding. Also enclosed is a check in the amount of \$250.00 to cover the filing fee (49 C.F.R. § 1002.2(f)(88)).

Please acknowledge receipt and filing of this Appeal and Motion by date stamping the enclosed eleventh copy and returning it to the courier to return to me. 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**

APPEAL AND MOTION TO HOLD IN ABEYANCE

**William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849**

December 30, 2010

**Attorneys for Indiana Southwestern
Railway Company**

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

STB Docket No. AB-1065X

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

APPEAL AND MOTION TO HOLD IN ABEYANCE

Pursuant to the Surface Transportation Board’s procedures at 49 C.F.R. §§ 1011.2(a)(7) and 1152.27(e)(2) governing appeals of initial decisions by the Director of the Office of Proceedings finding that an offer of financial assistance (“OFA”) satisfies the standards of 49 U.S.C. § 10904, Indiana Southwestern Railway Company (“ISW”) submits the following Appeal and Motion To Hold In Abeyance (“Appeal and Motion”).

BACKGROUND

On October 25, 2010, ISW filed a verified notice of exemption under 49 C.F.R. pt. 1152 seeking authority to abandon 17.2 miles of interconnecting rail lines extending between: (1) milepost 227.5 at Poseyville, Ind., and milepost 240.2 near German Township, Ind. (approximately 12.7 miles); and (2) milepost 277.5 at Cynthiana, Ind., and milepost 282.0 at Poseyville, Ind. (approximately 4.5 miles)(collectively, the “Lines”). On November 18, 2010, the Town of Poseyville, Ind. (the “Town”) filed a formal expression of intent to file an OFA to purchase the Lines proposed for abandonment. As relevant to this Appeal and Motion, on December 20, 2010, the Town timely filed an OFA under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c) to purchase the entire 17.2 miles of rail line for \$376,600. By a decision issued December 23, 2010, the Director accepted the OFA as reasonable and found the Town to be a

financially responsible party. ISW hereby appeals the Director's finding that the Town is financially responsible under the standards of 49 U.S.C. § 10904, and, for the reasons stated below, ISW also requests that the OFA proceeding be held in abeyance (including Board action on the appeal)¹ until such time as ISW can supplement the record based upon any evidence or documents ISW may obtain through the discovery process and to allow the parties additional time to explore alternatives to the OFA and abandonment process.

ARGUMENT

ISW understands the basis for the Director's decision; based as it was upon the record at that time and the short time frame upon which to make a decision. The Director's decision correctly noted that the Town, as a governmental entity, is presumed to be financially responsible. See 49 C.F.R. § 1152.27(c) (1)(ii)(B). The Director's decision stated that ISW bore the burden to rebut that presumption. ISW believed it had met its burden, or, at the very least, that it will meet that burden once it has obtained additional evidence through discovery with which ISW will be able to supplement the record. Although ISW has no further specific evidence at this time,² because appeals from a Director's decision finding an OFA offeror to be

¹ ISW has approached the Town to begin negotiations, including sending a proposed confidentiality agreement, but the Town so far has not responded to any of ISW's contacts. If either the Director or the Board is reluctant to hold the entire OFA proceeding in abeyance, then, at a minimum, the Board should hold the appeal portion of this Appeal and Motion in abeyance and not rule on the appeal until such time as ISW can supplement the record and the Town files an appropriate reply.

² ISW propounded discovery upon the Town on December 23. Under applicable Board regulations governing responses to discovery, ISW will not be able to obtain the information it has sought from ISW through discovery within the 10-day timeframe for an appeal to the entire Board as discovery responses are not due until January 7. A copy of the discovery is attached as Exhibit A for the record. As the Board can see, the types of questions and information sought go precisely to the issue of whether the Town has sufficient financial resources and sufficient legal authority to purchase the Lines and become a rail carrier.

financially responsible are due “within 10 days” after the Director’s decision,³ ISW has little choice under the Board’s regulations but to file its Appeal and Motion today so as to meet the “within the 10 days” deadline.

Although ISW has no further “specific evidence” at this time, ISW believes the Director had sufficient evidence to rebut the presumption that the Town is financially responsible. Through letters dated December 21 and December 23, ISW established that the Town most likely would not be able to afford to purchase the Lines, even at the “low-ball” price set forth in the Town’s OFA, for the following reasons: (1) the Town, with a population of no more than 1,200, would likely have insufficient resources to purchase the Lines; (2) the Town’s complaint about having to pay even the small OFA filing fee of \$1,500 indicates that the Town most likely does not have the resources to buy the Lines; and (3) the Town has stated that it plans to use a third party to operate the Lines, which indicates that it is this third party who is funding the OFA, and, if so, then, as a legal matter, this third party should be the offeror in any OFA proceeding and not the Town, which, if true, also means the presumption should not apply as the government was not the true offeror.⁴ ISW believes that these three reasons were sufficient either to rebut entirely the presumption that the Town, as a government entity, was financially

³ See 49 C.F.R. § 1011.2(a)(7). The Director’s decision was issued on December 23rd. The 10th day falls on Sunday, January 2. The Board will also be closed on December 31 and January 1, 2011.

⁴ The Town has admitted that intends to hire a third party operator. ISW strongly believes that it is this third party operator that is behind the Town’s OFA and that this operator is simply trying to use the Town as its surrogate in order to avoid filing fees and the Director’s scrutiny of this third party’s financial responsibility to buy the Lines. ISW requested to see a copy of the filing fee check in order to determine if it was provided by such a third party, but the Board’s staff turned down this request. The Board should take notice of the party paying the filing fee, and if it is a party other than the Town, then – (a) that provides further evidence that the Town is not the true offeror; and (b) the Town should not be accorded any presumption of financial responsibility.

responsible, or, at a minimum, shift the burden back to the Town to establish that it indeed possesses the resources to purchase the Lines.

Nonetheless, bound by the very strict timeframes regarding OFAs in abandonment notice of exemption proceedings and in light of the December 24 federal holiday, the Director had little choice but to issue her decision accepting or rejecting the OFA by December 23, the day after the filing fee check was received and based upon the record as then existing. Facing this time stricture and the regulation under which the Town is presumed to be financially responsible, the Director would have lacked the time to allow a shifting of the burden back to the Town, or to request further information from the Town (or from ISW for that matter). But the Board, through the appeals process or by way of either a Board or a Director's order holding the proceeding in abeyance, could allow for further development of the record in order to reconsider the Director's decision, and to allow the parties with additional time to develop a negotiated resolution beyond the OFA process.

The Director stated in the December 23rd decision that, "ISW has not offered sufficient specifics to rebut the Board's presumption." ISW offered the best evidence it could gather during the very limited time that it had (one day from the date the Town's OFA was deemed filed to the date the Board accepted that OFA), especially considering the very limited public information available from usual research references regarding the Town's financial wherewithal. As noted, ISW has recently propounded discovery to the Town, and there is sufficient time for the Town to respond to that discovery, for the record to be supplemented, for the Town to reply to that supplement, and for the Board to rule on the Appeal and Motion and before the Town would be required to request the Board to set the terms and conditions.⁵

⁵ Furthermore, to the extent the OFA proceeding were held in abeyance in order to allow further time for negotiation and development of the record, there would be even more time for the Board

Accordingly, ISW respectfully requests that either the Board or the Director hold the entire OFA proceeding in abeyance for an additional 30 days, or, at a minimum, the Board hold off ruling on the appeal portion of this Appeal and Motion in order to allow the discovery process to be completed; to enable ISW to supplement the record on the subject of the Town's financial responsibility; and to allow the Town to respond to ISW's evidence offered to rebut the presumption that the Town is financially responsible.

In the interest of ensuring an orderly process, a Board ruling on this Appeal and Motion should precede the Board's acceptance of a request for the Board to establish the terms and conditions for the sale of the Lines, should the Town opt to pursue such a step. A Board ruling on this Appeal and Motion could save both the Town and ISW substantial resources, particularly in the event that information obtained through discovery reveals either that the Town does not possess sufficient resources on its own to pay the purchase price for the Lines postulated in its OFA, or that some as-yet-undisclosed third party is actually behind the Town's OFA (in which case, that party ought to be required to pursue the OFA in its own name.)

Good cause exists for the Board to stay its hand in this proceeding until it has more information regarding the true scope of the Town's resources to fund the purchase of the Lines and the impetus behind the Town's OFA. As the Board has stated on multiple occasions, an offeror in an OFA proceeding should not invoke the OFA processes unless the offeror first articulates a genuine interest in, and basis for, preservation of the targeted line for the provision of rail service to shippers. In one recent proceeding, for example, the Board expressed concern over the prospect that its OFA processes could be abused to thwart other uses of the rail property

to rule upon the appeal portion of this Appeal and Motion. Likewise, since ISW is willing to negotiate and is hopeful that a negotiated settlement can be reached without the need for further Board intervention, it may be that the Board may never have to rule on the appeal portion of this Appeal and Motion.

that was the subject of the abandonment, and, for that reason, the Board prescribed specific information that an offeror would have to supply for the OFA process to go forward.

Specifically, the Board stated as follows:

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. Here, . . . any person who . . . intends to file an OFA should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line being abandoned or as manifested by other evidence of immediate and significant commercial need; whether there is community support for continued rail service; . . . and whether continued rail service is operationally feasible.

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).

In similar fashion, the Board advised in another recent proceeding involving an attempted OFA as follows:

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, or capable of, providing rail service or that there is no likelihood of future traffic. In Los Angeles County Metropolitan Transportation Authority – Abandonment Exemption – in Los Angeles County, CA, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 3 (STB served June 16, 2008) . . . , the Board provided that any person “who intends to file an OFA should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line being abandoned or as manifested by other evidence of immediate and significant commercial need; whether there is community support for continued rail service; whether acquisition of freight operating rights would interfere with current and planned transit services; and whether continued rail service is operationally feasible, especially where, as here, the line to be abandoned is physically constrained.” Although, in outlining the above criteria, the Board was addressing a request for an exemption from the OFA provisions as well as a notice of intent to file an OFA pertaining to a short .31-mile line, the criteria remain valid for an evaluation of feasibility of an OFA request . . .

Union Pacific Railroad Company – Abandonment Exemption – In Lassen County, CA, And Washoe County, NV, STB Docket No. AB-33 (Sub-No. 230X), slip op. at 2 (STB served Sept. 19, 2008) (footnote omitted).⁶

Here, the Town has made only passing reference to the basis for its interest in the Lines, and, in the process, has only hinted at the prospect that the Lines could once again become active for purposes of local freight service. It has never once identified any shippers it has contacted (or that has contacted the Town) regarding service, which contributes to ISW's considerable skepticism. Moreover, the Town has provided no business plans to demonstrate the Lines' future prospects to justify the Town's sizeable investment in the OFA process and in the purchase and ownership of a line of railroad (if indeed it is the true source of funds for either undertaking). Moreover, the Town has not shown that it has the resources to maintain the line or incur other costs of rail line ownership, and it has not offered even the slightest evidence to show that whatever traffic opportunities may exist are enough to support viable operations by a third party carrier. The absence of any justification for pursuing the subject OFA and the lack of any credible evidence of future need for rail service demonstrates clearly in and of itself that there is enough evidence, consistent with the precedent noted above, for the Board to reverse the Director's decision even without additional evidence. Such lack of justification also shows that the Town lacks a valid purpose in pursuing its OFA. Certainly the Town has supplied no justification for permitting an OFA to proceed under the standards set forth in the above-cited cases.

⁶ Cf. The Kansas City Southern Railway Company – Abandonment Exemption – Line in Warren County, MS, STB Docket No. AB-103 (Sub-No. 21X), et al., (STB served Dec. 12, 2007) (observing that an active shipper's notice of intent to file an OFA warrants processing of an OFA filing because the shipper's desire for continued rail service demonstrates a valid interest in preservation of the line under the OFA processes).

Nonetheless, if the Town is truly interested in exploring an arrangement for the preservation of the Lines for future rail freight service, then ISW would be interested in discussing such an arrangement. In fact, if the Town has information suggesting the future prospect that the Lines will be needed for rail service, then, depending upon the information provided, ISW might be willing to forego abandonment. Such discussions among ISW and the Town seem especially appropriate if the Town has concrete plans for rail service restoration, because the Lines connect exclusively with ISW, and, for this reason and others, ISW would undoubtedly be the most cost-effective and efficient rail service option in the event that the Lines are to be preserved.

As should be abundantly clear by now, ISW has obvious doubts that the Town has any specific shippers in mind or that it has a plan for the restoration of freight service on the Lines were the Town to acquire them. But if the Town has any such plan, then it would behoove both parties to explore alternatives to abandonment, rather than to force a costly and unnecessary OFA process. The Town's vague representations regarding the future need for rail service may or may not be backed by substance, but if there is genuine interest and substance behind that interest, then the parties should be afforded the opportunity to explore such options without the time pressures imposed by an ongoing OFA process.

ISW is not in the business of salvaging railroads. Rather, ISW is a short line with a strong interest in maintaining the most expansive customer reach possible, given the economic realities of running a small railroad. Accordingly, ISW would be interested in a mutually acceptable arrangement that would allow for the preservation of the Line and the withdrawal of its abandonment notice. For this reason, ISW suggest that good cause exists for either the Board or the Director to order the OFA proceeding be held in abeyance for at least an additional 30 days beyond the existing January 19 deadline in order to allow the parties to explore alternatives

to abandonment, and, if necessary (assuming that the Town has no concrete plans for future rail service) to allow pending discovery requests pertaining to the Town's disputed financial responsibility to be completed before the Board must rule on the appeal portion of this Appeal and Motion.

ISW submits that holding this proceeding in abeyance for at another 30 days beyond the January 19 deadline for the dual purposes of obtaining information relevant to the pending OFA process and to explore through discussion and negotiation alternatives to abandonment (and, by extension, to the OFA process itself) is wholly consistent with Board policy and precedent. See BNSF Railway Company – Abandonment Exemption – In Colfax County, NM, STB Docket No. AB-6 (Sub-No. 428X) (STB served Sept. 30, 2005) (granting request to hold OFA process in abeyance to allow parties to explore alternatives to sale of line through an OFA); cf. Escanaba & Lake Superior Railroad Company – Abandonment Exemption – In Ontonagon and Houghton Counties, MI, STB Docket No. AB-415 (Sub-No. 2X) (STB served Jul. 21, 2010) (holding abandonment proceeding in abeyance for 60 days to allow interested parties to explore alternatives to abandonment). In addition, the requested abeyance would permit the Board to take up ISW's appeal, if such an appeal is still warranted at the end of the abeyance period, after ongoing discovery is completed, and after the record is better developed to aid the Board in ruling on ISW's request to reverse the Director's findings in the decision issued in this proceeding on December 23.

CONCLUSION

For the reasons set forth above, ISW submits the foregoing Appeal and Motion, and, at a minimum, requests that the Board not rule upon this appeal until such time as ISW can supplement the record based upon any evidence or documents ISW may obtain through the discovery process and for the Town to reply to that supplement. In the alternative, or perhaps in

addition to such a ruling, ISW urges either the Board or the Director to order the entire OFA proceeding to be held in abeyance for an additional 30 days beyond the existing January 19, 2011 deadline in order to allow the parties to explore alternatives to abandonment and/or to the OFA process and to allow the Board time to rule upon the appeal based upon a complete record.

Respectfully submitted,



William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7823
Fax: (202) 663-7849

Attorney for Indiana Southwestern
Railway Company

December 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Appeal And Motion To Hold In Abeyance by mailing copies of the same 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 30th day of December, 2010.



William A. Mullins
Attorney for Indiana Southwestern
Railway Company

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

STB Docket No. AB-1065X

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

EXHIBIT A – COPY OF DISCOVERY REQUEST

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW

SUITE 300

WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820

FACSIMILE (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

December 23, 2010

VIA ELECTRONIC AND OVERNIGHT DELIVERY

Mr. William H. Bender
Town Of Poseyville Attorney
20 S. Cale Street
P.O. Box 194
Poseyville, IN 47633

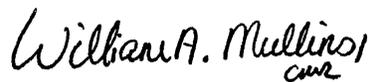
Re: STB Docket No. AB-1065X
*Indiana Southwestern Railway Co. – Abandonment Exemption – In Posey and
Vanderburgh Counties, IN*

Dear Mr. Bender:

I am enclosing herewith Indiana Southwestern Railway Co.'s ("ISW") First Discovery Requests directed to your client, the Town of Poseyville, IN, in connection with the above-captioned proceeding. This discovery is served pursuant to the Surface Transportation Board's regulations at 49 CFR §1114.21, and related regulations.

In accordance with applicable Board regulations, complete responses to these requests are due by January 7, 2011. Please feel free to contact me promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously. I can be reached by phone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,



William A. Mullins

cc: Daniel A. LaKemper
Ms. Venetta Keefe

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

STB DOCKET NO. AB-1065X

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

**FIRST DISCOVERY REQUESTS OF INDIANA SOUTHWESTERN RAILWAY CO.
TO THE TOWN OF POSEYVILLE, IN**

**Daniel A. LaKemper
General Counsel
Indiana Southwestern Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

December 23, 2010

**Attorneys for Indiana Southwestern
Railway Co.**

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

STB DOCKET NO. AB-1065X

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

**FIRST DISCOVERY REQUESTS OF INDIANA SOUTHWESTERN RAILWAY CO.
TO THE TOWN OF POSEYVILLE, IN**

Pursuant to 49 CFR §1114.21 through 1114.31, Indiana Southwestern Railway Co. (“ISW”) hereby directs the following discovery requests to the Town of Poseyville, IN (the “Town”). Responses should be served as soon as possible, and in no event later than January 7, 2010. The Town is requested to contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously, to avoid unnecessary delay to the proceeding.

THE PARTIES

1. “Town” means the Town of Poseyville, IN, and includes its elected officials, employees, agents, representatives acting on its behalf, and consultants advising it in connection with the above-referenced proceeding before the Surface Transportation Board.
2. “ISW” means Indiana Southwestern Railway Co.
3. “You” and “Your” means the Town.

DEFINITIONS

1. “AB-1065X” means STB Docket No. AB-1065X, Indiana Southwestern Railway Co. — Abandonment Exemption — in Posey and Vanderburgh Counties, IN.

2. "Board" or "STB" means the Surface Transportation Board and, if applicable, its predecessor agency, the Interstate Commerce Commission.
3. "Contemplate" means as contemplated by the Applicants and/or any consultant.
4. "Describe" when used in relation to a discussion, meeting or other communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.
5. "ISW" means Indiana Southwestern Railway Co., its owners and affiliates, including Pioneer Railcorp.
6. "Document" means any writing or other compilation of information, whether printed, typed, handwritten, recorded, or produced or reproduced by any other process, including: intra-company communications; electronic mail; correspondence; telegrams; memoranda; contracts; instruments; studies; projections; forecasts; summaries; notes, or records of conversations or interviews; minutes, summaries, notes, or records of conferences or meetings; records or reports of negotiations; diaries; calendars; photographs; maps; tape recordings; computer tapes; computer disks; other computer storage devices; computer programs; computer printouts; models; statistical statements; graphs; charts; diagrams; plans; drawings; brochures; pamphlets; news articles; reports; advertisements; circulars; trade letters; press releases; invoices; receipts; financial statements; accounting records; and workpapers and worksheets. Further the term "document" includes:
 - a. both basic records and summaries of such records (including computer runs); and
 - b. both original versions and copies that differ in any respect from the original version, including notes.

7. "Identify,"

- a. when used in relation to an individual, means to state the name, address, and business telephone number of the individual, the job title or position and the employer of the individual at the time of the activity inquired of, and the last-known position and employer of the individual;
- b. when used in relation to a corporation, partnership, or other entity, means to state the name of the entity and the address and telephone number of its principal place of business and its location relative to the track owned by the Town;
- c. when used in relation to a document means to:
 - i. state the type of document (*e.g.*, letter, memorandum, report, chart);
 - ii. identify the author, each addressee, and each recipient; and
 - iii. state the number of pages, title, and date of the document;
- d. when used in relation to an oral communication or statement means to:
 - i. identify the person making the communication or statement and the person, persons, or entity to whom the communication or statement was made;
 - ii. state the date and place of the communication or statement;
 - iii. describe in detail the contents of the communication or statement; and
 - iv. identify all documents that refer to, relate to or evidence the communication or statement;
- e. when used in any other context means to describe or explain in detail.

8. "Including" means including without limitation.

9. "Lines" means all or any portion of the 17.2 miles of rail lines owned by ISW which are the subject of the above-captioned abandonment proceeding before the Board, and which lines

extend 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).

10. “Offer” or “OFA” means the Offer of Financial Assistance filed in this proceeding pursuant to 49 U.S.C. §10904 and 49 CFR §1152.27 by the Town, through which process the Town proposes to acquire the Lines.

11. “Person” means an individual, company, partnership, or other entity of any kind.

12. “Provide” (except where the word is used with respect to providing service or equipment) or “describe” means to supply a complete narrative response.

13. “Produce” means to make available to the undersigned attorneys for copying and viewing.

14. “Relate to” or “relates to” a subject means making a statement about, referring to, or discussing the subject, including, as to actions, any decision to take, not take, defer, or defer decision, and including, as to any condition or state of affairs, its absence or potential existence.

15. “Request” means interrogatory, request for admission or request for production of documents or things.

16. “Shipper” means a consignor, a consignee, receiver or other user of rail transportation services.

17. “Studies, analyses and reports” include studies, analyses, and reports in whatever form, including letters, memoranda, tabulations, and computer printouts of data selected from a database.

18. “This Proceeding” means STB Docket No. AB-1065X, Indiana Southwestern Railway Co. — Abandonment Exemption — in Posey and Vanderburgh Counties, IN.

19. “Town” means the Town of Poseyville, IN, and includes its elected officials, employees,

agents, representatives acting on its behalf, and consultants advising it in connection with the above-referenced proceeding before the Board.

INSTRUCTIONS

1. Any delay in production of requested documents or answers to Requests is certain to prejudice ISW's ability to present evidence to the Board concerning the Town's OFA.

Accordingly, answers and responsive documents should be produced to the undersigned counsel at Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037, not later than January 7, 2011. Serial production of relevant documents and narrative responses during that period is encouraged and requested. Objections, if any, should be made as soon as possible, and not later than fifteen (15) days after the date of service of the requests.

2. You should contact William A. Mullins at (202) 663-7823 immediately to discuss any objections or questions with a view to resolving any dispute or issues of interpretation informally and expeditiously.

3. Unless otherwise specified, these Requests cover the period beginning January 1, 2009, and ending with the date of the response.

4. If You object to any Request or any part thereof, please state the reasons for such objection, including all information forming the basis for such objection.

5. If You have information that would permit a partial answer to any Request, but You would have to conduct a special study to obtain information necessary to provide a more complete response to that Request, and if the burden of conducting such special study would be greater for You than for ISW:

a. state that fact;

- b. provide the partial answer that may be made with information available to You;
 - c. identify such business records, or any compilation, abstract, or summary based thereon, as will permit ISW to derive or ascertain a more complete answer; and
 - d. as provided in 49 C.F.R. § 1114.26(b), produce such business records, or any compilation, abstract, or summary based thereon, as will permit ISW to derive or ascertain a more complete answer.
6. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable,
- a. identify the information or document (in the manner provided in Definition 9 *supra*); and
 - b. state the basis for the claim that it is privileged or otherwise not discoverable.
7. References to railroads, shippers, and other companies include: parent companies; subsidiaries; controlled, affiliated, and predecessor firms; divisions; subdivisions; components; units; instrumentalities; partnerships; and joint ventures.
8. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.
9. If You know or later learn that a response to any Request is incorrect, You are under a duty seasonably to correct that response.
10. Pursuant to 49 CFR § 1114.29, You are under a duty seasonably to supplement Your responses with respect to any question.

DISCOVERY REQUESTS

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.

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.

Request No. 3. Has the Town accounted for the potential cost of purchasing the Lines in its 2010 annual budget and/or its 2011 annual budget, or has the Town amended or revised its budgets or spending plans to account for the contemplated purchase of the Lines? If not, why not? If so, provide copies of all documents related to the Town's budget(s) reflecting the contemplated purchase of the Lines.

Request No. 4. Provide a list of all Town bank accounts (including the name of each such institution holding funds for the Town), the amount(s) currently in such account(s), and provide the amount of the Town's current cash on hand.

Request No. 5. If the Town does not currently possess sufficient funds in its own accounts to pay for the Line's contemplated purchase price, identify the source(s) of funds from which the Town would draw to purchase the Lines, and provide adequate information to establish that the subject source(s) of funds are sufficient to cover the cost of purchasing the Lines.

Request No. 6. Identify the source(s) of funds from which the Town would draw or plans to draw to purchase the Lines, and provide adequate information to establish that the subject source(s) of funds are sufficient to cover the cost of purchasing the Lines.

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.

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.

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

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).

Request No. 11. Identify the individuals representing the Town that possess the authority to purchase assets such as the Lines on the Town's behalf, and/or that possess the authority to borrow money on behalf of the Town.

Request No. 12. Have the individuals identified in your response to Request No. 11 obtained the necessary approvals, if any are required, to secure funds from any lending source(s) for the purposes of acquiring the Lines? If not, identify the approval(s) that would be necessary for these individuals to secure the funds necessary for the Town to purchase the Lines.

Request No. 13. Did the Town's preparation and filing of the OFA require the advance approval and/or authorization of any elected or appointed official representing and/or employed by the Town? If so, identify the individual(s) required to approve and/or authorize the preparation and filing of the OFA, and provide a copy of any records of such approval or authorization.

Request No. 14. For each individual identified in response to Request No. 13, provide all documents and describe all communications upon which such individual relied in providing his or her advance approval and/or authorization.

Request No. 15. By what method was the OFA filing fee of \$1,500 paid to the Board? Was this amount paid by the Town from an account or source of funds managed and controlled by the Town, or was the subject filing fee supplied by a third party? If supplied by a third party, identify the third party supplying the filing fee.

Request No. 16. In light of the proposed purchase price for the Lines set forth in the OFA, ISW believes that it is highly unlikely that the parties will reach an agreement for the voluntary sale of the Lines under the OFA process, and that the Town will have to consider filing a request for the Board to prescribe the terms and conditions for the sale of the Lines pursuant to 49 CFR § 1152.27(g), along with the requisite filing fee of \$22,600. If the parties do indeed fail to reach an agreement under the OFA process, and the Town opts to seek Board-prescribed terms and conditions –

(a) by what process would the Town need to approve or authorize the expenditure of \$22,600 to satisfy the subject filing fee?

(b) Would the necessary filing fee be provided by a third party, and, if so, by who?

Request No. 17. Provide copies of all documents in which elected or appointed Town officials have discussed and/or approved of plans to proceed with the subject OFA, including, but not

limited to meeting minutes, resolutions, reports, and presentations made to such elected and/or appointed officials pertaining to the future disposition of the Lines, the abandonment process before the Board, and the OFA process.

Request No. 18. According to the instruments governing the Town's activities and property acquisitions, what approvals, official acts (such as resolutions or ordinances), or other such prerequisites, if any, must the Town pass, accomplish, endorse or secure before it may purchase the Lines?

Request No. 19. Is the Town permitted under its charter and/or other governing documents or by law to own railroad assets, to be or operate a railroad, and/or become a common carrier? If so, please provide documents establishing that the Town faces no legal impediment or bar to owning railroad assets, operating railroads, and/or to becoming a railroad common carrier.

Request No. 20. The Town has indicated that, if it were to acquire the Lines, it would install a third party with railroad operating experience to operate them. If this is the Town's plan, identify –

- (a) the party(ies) with which the Town has communicated regarding such service; and
- (b) the particulars of the discussions thus far conducted with such third party(ies).

Request No. 21. Produce all documents in your possession, including contracts, correspondence, and any other document, regarding the future provision of rail service over the Lines in the event they are acquired by the Town.

Request No. 22. Has the Town communicated with any third party concerning the sale of the Lines or any portion of the Lines or any interest therein to that third party following the Town's planned acquisition of the Lines through the OFA process? If so, identify such third party(ies),

and provide all documents between the Town and such third party(ies) relating to such transfer of a total or partial interest in the Lines.

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? If so, 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.

Request No. 24. Has the Town received, or is it receiving, assistance and/or guidance from any third party(ies) in preparing its OFA (including the valuation of the Lines contained in the OFA), and prosecuting the OFA process into the future? If so, identify –

- (a) the third party(ies);
- (b) its interest(s) in the OFA process and in the Lines;
- (c) the terms or understanding(s) pursuant to which such third party(ies) assisted in the OFA filing, including the preparation of the Lines' estimated valuation contained therein; and
- (d) provide all documents relating to such third party's provision of assistance to the Town in connection with the OFA process, including all future potential steps in the OFA process, and the conditions pursuant to which such third party(ies) have provided and/or will provide assistance to the Town.

Request No. 25. Identify who, on behalf of the Town, prepared the valuation estimates contained in the OFA, and identify who in particular determined the track materials valuation and land value estimate contained in the OFA?

Request No. 26. If any of the individuals or entities identified in response to Request No. 25 is/are not employees of the Town –

- (a) explain the arrangements relating to how the Town came to obtain the services of such individuals or entities;
- (b) provide all communications surrounding the Town's obtaining of such services; and
- (c) provide all documents setting forth the terms under which such services were furnished to the Town.

Request No. 27. Does the Town have, or has any third party provided it with, a business plan for the future operation of the Lines in the event that the Town were to purchase the Lines through the OFA process? If so, provide a copy of any and all such business plans.

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.

Request No. 29. If the Town were to acquire the Lines, would it operate the Lines itself or would it arrange for the provision of such service through a third party? If the latter, identify any third party that is or has been in contact with the Town regarding operation of the Lines.

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.

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.

Request No. 32. Identify the person(s) providing the response to each of these Requests.

Respectfully submitted,

William A. Mullins
William A. Mullins *aw2*
Robert A. Wimbish
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Indiana Southwestern Railway Co.

CERTIFICATE OF SERVICE

I, Robert A. Wimbish, hereby certify that on this 23rd day of December, 2010, copies of the foregoing Discovery Requests were served by electronic (e-mail) delivery and overnight delivery upon counsel for the Town of Poseyville, IN.



Robert A. Wimbish
Attorney for Indiana Southwestern Railway Co.