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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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June 20, 2017
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STB Docket No. AB-55 (Sub-No. 643X)

**CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN LAPORTE, PORTER AND STARKE COUNTIES, IN**

**CHESAPEAKE AND INDIANA RAILROAD COMPANY
PETITION TO REOPEN
OFFER OF FINANCIAL ASSISTANCE PROCEEDING**

FD 36076

**CHESAPEAKE AND INDIANA RAILROAD COMPANY
PETITION FOR DECLARATORY RELIEF**

**PETITION FOR RECONSIDERATION
AND MOTION TO STRIKE**

Submitted by

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June 20, 2017
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I.

INTRODUCTION

Pursuant to 49 CFR §1115.3, Chesapeake And Indiana Railroad Company (“CKIN” or “Petitioner”) petitions the Surface Transportation Board (“the Board”) to reconsider its decision served June 1, 2017,¹ in the above-captioned proceedings. That decision denied CKIN’s November 14, 2016, combined Petition to Reopen the Offer of Financial Assistance proceeding and Petition for Declaratory Relief. Through discovery obtained in the civil litigation

¹ Cited as the *June 1 Decision*.

that it has filed in its Indiana state court litigation,² CKIN has recently obtained evidence indicating that submissions filed by the Town of North Judson (the “Town”) and the Hoosier Valley Railroad Museum (“HVRM”) contain materially false statements. CKIN contends that *had* the Board learned about such misrepresentations at the start of these proceedings, it would have decided this case differently. Accordingly, CKIN requests that the Board strike such false statements, reconsider its *June 1 Decision*, reopen these proceedings, and conduct a thorough investigation of the conduct by the Town and HVRM.

II. BACKGROUND

Inasmuch as the facts are well known to the Board, they will only be repeated to the extent relevant or necessary. Petitioner is a Class III short line railroad operating in the State of Indiana. On August 31, 2004, it entered into a five year agreement with the Town to operate about 33 miles of railroad track (hereafter “the Line”) the Town had acquired from CSX Transportation in an abandonment proceeding. That agreement was subsequently extended by mutual agreement until December 2015. Because of disagreements, the Town provided CKIN with notice to terminate on December 31, 2015. Eventually the parties engaged in mediation that resulted in a settlement that CKIN believes resulted in

²*The Chesapeake And Indiana Railroad Company, Inc., v. Incorporated Town of North Judson*, Docketed as Cause No. 46C01-1610-PL. A copy of the complaint was attached to CKIN’s Petition.

an agreement to lease the Line to Co-Alliance, Inc. (“Co-Alliance”), the major the shipper on the Line. Co-Alliance stated that it would continue to engage CKIN as its operator provided that the parties could reach a mutually acceptable agreement. Meanwhile believing that Indiana law required it to solicit competitive bids from potential operators, the Town published a Request for Proposal. Four parties including Co-Alliance and Lake State Railway (“Lake State”), a Michigan-based short line railroad, submitted bids. The Town picked Lake State as its proposed new operator. During the course of the RFP process, the Town extended the operating agreement with CKIN until May 15, 2016, and then until August 15, 2016. Once it became obvious that the Town would not abide by the outcome of the Mediation Agreement, CKIN on October 31, 2016, filed suit against the Town in Indiana state court for breach of contract, among other grounds.

Shortly after initiating the Indiana civil litigation, CKIN petitioned the Board for relief on November 14, 2016. It asked the Board to reopen the above-captioned OFA proceeding and to institute a declaratory relief proceeding as well. Based upon evidence obtained after 2014, it sought this relief believing that the Town’s 2004 acquisition and ownership of the subject line of railroad was contrary to the requirements of 49 U.S.C. §10904(d)-(f) as well as the rail transportation policy (“RTP”) goals of the ICC Termination Act (“ICCTA”) and the policies of the Board. Accordingly, it asked the Board to void the Town’s acquisition of the Line

and to order the Town to sell the Line to CKIN at a price to be established through Board-supervised negotiations. Alternatively, it requested that the Board institute an investigation to determine whether the Town's ownership and administration of the Line violated the RTP goals and Board precedent and to prescribe such relief as it deemed appropriate. Believing that discovery in the civil litigation would reveal relevant information, CKIN reserved the right to supplement the record in the Board proceedings. The Town, HVRM, the Indiana Department of Transportation ("INDOT"), and the Chicago & North Judson Railway Company ("CNJR")³ replied in opposition to CKIN's Petition. On January 17, 2017, CKIN replied.⁴

Meanwhile in the civil proceeding, CKIN served discovery in December 2016 consisting of interrogatories and document production requests on the Town. It also sought discovery from HVRM. Rather than respond promptly, both parties engaged in a variety of delaying tactics forcing CKIN to send numerous emails reminding the recipients of a need to respond. Eventually both the Town and HVRM responded providing a virtual treasure trove of answers and documents in stages starting on April 26, 2017, and continuing until the present date. Some answers are still forthcoming and CKIN will be serving notices of depositions.

Finally, on June 1, 2017, the Board served its decision denying CKIN's reopening request on the grounds that it has not provided sufficient evidence to

³ A noncarrier and newly established affiliate of Lake State.

⁴ The Board accepted CKIN's reply in the interest of a complete record.

convince the agency to materially alter the 2004 decision approving transfer of the Line to the Town. The evidence recently obtained by CKIN through discovery and presented here should convince the Board that its prior decision was in error. Moreover, the Board also concluded, wrongly CKIN believes, that there was no controversy or uncertainty warranting it to use its discretion to institute a declaratory proceeding.

III.
SUMMARY OF ARGUMENT
Required (insert here)

IV.
ARGUMENT

A. Evidence recently obtained through discovery requires
the Board to reconsider and reopen the *June 1 Decision*

49 CFR §1115.3(b) provides that a reconsideration petition will be granted only upon a showing of one or more of the following points:

- (1) The prior action will be affected materially because of new evidence or changed circumstances.
- (2) The prior action involves material error.

Where a party presents new evidence or substantially changed circumstances or shows that the prior action involved material error, the Board will reconsider its prior decision. *Total Petrochemicals & Refining USA, Inc. v. CSX Transportation, Inc.*, No. 42121 (slip. op. at 3, STB served Sept. 4, 2015).

CKIN presents evidence that should convince the Board that the *June 1 Decision* was wrongly decided. That evidence consists of discovery responses obtained in the civil litigation from the Town and HVRM that was not available until very recently. Although CKIN served its discovery requests on the Town and HVRM in December 2016, they waited months to respond and, at that, only until after receiving CKIN's Motions to Compel. CKIN attaches to this Petition relevant copies of that discovery along with a verified statement by its president, Powell Felix, explaining why evidence previously submitted by the Town and HVRM contain materially false information. CKIN also submits with Mr. Felix's written testimony an excel spreadsheet comparing the conditions under which CKIN operated the Line for the Town under the 2004 Operating Agreement, the conditions under which an operator would provide service under the unsigned draft 2015 Operating Agreement which HVRM helped to prepare, and the conditions that would apply to CNJR operations under its proposed lease and operating protocols with the Town and HVRM, respectively.⁵ CKIN reserves the right to supplement this filing as more information is obtained.

The Board also materially erred in its review and analysis of the facts presented by the parties. For example, in refuting CKIN's allegation that actions

⁵ CKIN first received a copy of the lease as an attachment to an email from Town attorney Rachel Arndt on May 1. While the lease is simply dated ____ 2017, the accompanying "Agreement for Tourist Passenger Transportation" between the Town and HVRM is dated Feb. 6, 2017.

of HVRM and enabled indirectly by the Town hindered CKIN's common carrier service, the Board noted how the traffic on the Line grew from 506 car loads in 2005 to 4,312 car loads in 2015. Despite what the Board may have learned from the Town, this 800% growth was in no way due to the Town's actions. It was due to CKIN's marketing efforts, Co-Alliance's decision to expand its on-line facility and to move more traffic by rail in response to those marketing efforts, CKIN's attractive rate structure, and CKIN's action in building a competitive track connection to Norfolk Southern Railroad at CKIN's expense. Second, in response to HVRM's "limited" passenger schedules (73 trains operated on just 31 days during 2016), those restrictions were the result of language contained in the mediation agreements signed by both CKIN *and the Town*.⁶ Finally, the Board's discussion of the *State of Maine* precedent totally misses the point. CKIN agrees that the *State of Maine* doctrine does not apply to public agencies acquiring rail lines along with the common carrier obligation. Rather, the Town's transgression was allowing HVRM, a railroad museum outside the Board's regulatory jurisdiction, to assume certain functions that the Town as a common carrier and the Line's owner would normally perform. Powell Felix identifies some of these functions in his verified statement.

⁶ Copies are attached to Powell Felix's statement as attachments 1 and 2.

In its November 14 Petition, CKIN characterized this proceeding as “one of first impression” in the sense that it knows of no situation where either a rail line owner or another rail line user (here HVRM) took actions that could impede the ability of the common carrier operating over the line to provide service. However, CKIN has learned of one situation that does bear some resemblance. In *North Coast Railroad Authority And Northwestern Pacific Railroad Company-Petition for Declaratory Order*, FD 36077, the public agency owner of a line acquired for passenger service imposed restrictions on the ability of the freight railroad common carrier tenant to provide service. Those restrictions took the form of requiring the freight railroad to obtain a warrant before moving or storing hazardous commodity cars or sometimes outright prohibiting the movement or storing of such cars. The Board’s November 3, 2016, decision said “this case appears to raise a number of novel issues that require further briefing by the parties” regarding the railroad’s common carrier obligation and whether the public agency’s actions are preempted by federal law. After the Board directed the parties to brief certain issues and provide certain information, the parties settled their dispute. Consequently, the Board never addressed the conflict between common carrier freight service and passenger needs.

Although comparatively rare, the Board has on occasion stepped in to provide relief where the actions of one carrier were preventing another carrier from

performing common carrier rail service. *See, Pyco Industries, Inc.- Alternative Rail Service-South Plains Switching LTD Co.*, FD 34802 (STB served Feb. 24, 2006)(where the STB established and monitored operating protocols between carriers in the context of an alternative rail service petition filed by a customer). There is no reason why it could not and should not act here where a petitioner provides evidence of a party jeopardizing its ability to provide rail service.

B. The Board should strike materially false
information submitted by the Town and HVRM

Pursuant to 49 CFR §1104.8 and 49 CFR §1104.17, CKIN moves the Board to strike as materially false certain evidence previously submitted in these proceedings by both the Town and HVRM. While §1104.8 addresses redundant, irrelevant, immaterial, or scandalous matter, there is no reason why it should not cover material misrepresentations as well. In any event, the Board has held that a material misrepresentations made by a party to a proceeding can be the basis for reopening the proceeding or rejecting or finding *void ab initio* a filing with the agency. *1411 Corporation-Abandonment Exemption-In Lancaster County, PA*, AB-581X, *Et Al* (slip. op at 7, note 15, STB served Oct. 18, 2001); *cf. San Francisco Bay Railroad-Mare Island-Operation Exemption-California Northern Railroad, Et Al.*, FD 35304 (slip op. at 3-4, STB served Dec. 6, 2010).

Mr. Felix's statement identifies numerous misrepresentations made by the Town and HVRM to the Board by comparing each statement with an email or

other evidence obtained through discovery refuting that statement. A summary of those statements follows immediately below.

COMMENT SUMMARY

- HVRM never had any “unhampered” passenger rights. Powell Felix recognizes that a better term would have been “unfettered”. But the passenger rights were restricted as per the mediation agreement rather than anything Mr. Felix said or did.
- HVRM alleges that there were no operating rights (i.e. passenger/freight) conflicts or shipper complaints. There is substantial evidence to the contrary.
- HVRM claims to have no knowledge of the “grand bargain” (the settlement whereby Co-Alliance leases the railroad with CKIN as the operator and CKIN drops its litigation). Numerous emails show that HVRM was kept informed as to what was going on.
- HVRM had no input in 2016 RFP and no undisclosed contacts with potential operators. It had a substantial role in the terminated 2015 process and was promoting Frontier in 2015 and 2016 as a potential operator. The RFP does in fact give it a role and Town representative Wendy Hoppe acknowledged as much. HVRM accompanied bidders on a tour of the railroad and had substantial contact with Lake State in the process.

- Unsafe condition of track. HVRM claims to have an “exceptional” safety culture. CKIN has requested records from the FRA but according to attorney James Helenhouse with Fletcher & Sippel, the same law firm representing CNJR, the cause of the 2011 accident was HVRM negligence in overloading the tender of the steam locomotive.

- Miscellaneous points:

- ☐ HVRM complained that CKIN sought to monitor or veto its FRA waiver requests. But the 2016-7 agreements cede that right to CNJR.

- ☐ HVRM blames CKIN for loss of car storage business, stored cars blocking HVRM movements. But these cars were stored for Co-Alliance.

- ☐ The Town paid nothing for line. Funding was Federal Highway (\$1,000,000), Indiana DOT (\$500,000), the three counties \$150,000 (\$50,000 each), and Co-Alliance’s predecessor (\$300,000).

- ☐ CKIN is forcing the Town and HVRM to carry \$10 million in insurance. But that’s what the 2016-7 agreements require.

- ☐ HVRM says that it had to upgrade excepted track at its own expenses, a job that CKIN should have done. In fact the line was excepted track when acquired from CSX.

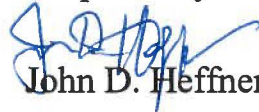
HVRM and the Town want the Board to believe that the museum lacked any control over how operations are conducted over the Line. But nothing could be

further from the truth. Aside from its deep involvement in the RFP process, HVRM exercised substantial control over how the Town administered the railroad. It was deeply involved in decisions on, among other things, budgeting funding for the Town's railroad needs, track conditions and rehabilitation and conflicts between common carrier freight and its excursion passenger operations. One understandable reason for this could be that a town of some 1700 people lacked any expertise in how to maintain and/or operate a railroad. Evidence of the Town's involvement includes the fact that it was copied on virtually every email or other railroad-related communication involving the Town including some that might otherwise be covered by attorney-client privilege. For the Town and HVRM to assert that HVRM exercised no control is a serious misrepresentation that justifies Board action striking all evidence in this proceeding submitted by both the Town and HVRM.

V. CONCLUSION

Accordingly, CKIN requests that the Board strike such false statements, reconsider its *June 1 Decision*, reopen these proceedings, and conduct a thorough investigation of the conduct by the Town and HVRM.

Respectfully submitted,



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Due: June 20, 2017

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing "Petition for Reconsideration and Motion to Strike" Relief dated June 20th, was sent by U.S. mail and electronic mail to all parties of record in this proceeding.

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John D. Heffner

Dated: June 20, 2017

VERIFIED STATEMENT
OF R. POWELL FELIX



R. Powell Felix, being duly sworn, deposes and states as follows:

I am President of the Chesapeake And Indiana Railroad Company ("CKIN"), a Class III short line railroad subsidiary of railroad holding company Indiana Boxcar. I am the same person who previously testified in connection with a Petition to Reopen an Offer of Financial Assistance Proceeding and a Petition for Reconsideration that CKIN filed in these proceedings on November 14, 2016. I have reviewed the filings made by various parties in these proceedings specifically those submitted by Wendy Hoppe with the Town of North Judson ("the Town") and Mark Knebel with the Hoosier Valley Railroad Museum ("HVRM"). Their testimony contains so many material inaccuracies that they should be stricken from the record in these proceedings and their submissions disregarded. I will present some selected examples followed by a truthful clarification of each. The numbers in parentheses refer to the bates numbers of documents obtained in the civil litigation discovery. These documents are attached in numerical sequence.

"Unhampered" passenger rights. The term "unhampered" passenger rights originated with HVRM. (1399) I would have used the term "unfettered." According to Ms. Hoppe, the RFP did not have "unhampered" passenger rights over the Line nor did it favor the same while disregarding freight operations or

safety. The *May 31 Decision* cites Mark Knebel's statement that HVRM was only able to conduct passenger operations on 31 days for a total of 73 trips during 2016 to support its finding that CKIN provided no evidence for its claim that the Town has interfered with its freight service.¹ In fact, the limitations on HVRM's passenger rights during the period between December 2015 and August 15, 2016, were mandated by the Mediation Agreement voluntarily entered into by the Town and CKIN.² Section 4 specifically states "the parties agree that there shall be no passenger service during the extension period" (initially December 9 through May 15, 2016, later extended to August 15, 2016). Town attorney Rachel Arndt references this prohibition in her various emails to or with HVRM. (256, 696, 959) Despite that language, CKIN did permit HVRM to operate an Easter excursion as a showing of its good faith. Moreover, the Supplement to that Agreement³ (extending the term to August 15) further extends that restriction stating that the Town will not permit HVRM to operate any passenger service outside the North Judson to English Lake segment⁴ except with the written consent of both the Town and CKIN at their sole discretion. The Supplement also requires that any passenger service

¹ Slip op. at page 5.

² Copy attached as Attachment 1.

³ Copy attached as Attachment 2.

⁴ On May 3, 2016, CKIN turned over control of that segment to the Town so HVRM could continue to operate its regular schedule.

requests must be submitted to the Town and HVRM 30 days in advance and only allows two such requests.

Mr. Knebel then states that HVRM has never interfered with CKIN's common carrier freight operations and there have been no complaints regarding any alleged interference. Knebel at paragraph 10. In fact, as freight traffic has increased over the last several years, HVRM planned passenger operations without regard to CKIN's freight operations. Even while the Mediation Agreement was in place, HVRM continued to plan passenger operations in direct conflict with that Agreement's restrictions. (696) The Town and HVRM also tried to recruit INDOT to take the position that passenger operations should take precedence over CKIN's freight operations. (696)

On March 18th, 2016 the Town and Co-Alliance tried to compromise on a schedule for passenger operations that would not unnecessarily interfere with freight operations. Nevertheless, Mr. Knebel stated that HVRM could not give preference to freight operations because it would inconvenience passenger operations. *See* discussion on page 4 and related emails.

Operating conflicts and shipper complaints. In paragraph 10 of his statement, Mark Knebel boldly proclaims "to HVRM's knowledge there has never during all the years that HVRM operated its tourist trains been an operating conflict between the freight service operated by CKIN and HVRM's

trains. Nor has there been any complaint received by (sic) shippers on the line regarding HVRM's operations."

Information obtained by CKIN through discovery demonstrates the falsity of this statement. For example, on March 18, 2016, Town Attorney Arndt forwarded to Town council member Alicia Collins and Mark Knebel, an email from Co-Alliance's Kevin McGuire expressing concern about any interference between HVRM passenger operations and Co-Alliance's shipping needs. (690-1) Council member Justin Davis responded by stating "Since when does co-alliance (sic) control the scheduling of our rail." (689-90) In an email dated October 11, 2016, Mark Knebel complained "Co-A [Co-Alliance] is acting like they own the rail line..." (1399) In another email in this chain, HVRM's counsel states that Co-Alliance should not have input into the operating protocols agreed to between Lake State [Chicago and North Judson Railway]." (1399). So much for the public convenience and necessity!

The "Grand Bargain". CKIN uses this phrase to refer to a settlement whereby the Town would transfer the Line to Co-Alliance (by either lease or sale) for operation by CKIN in exchange for a withdrawal of its litigation against the Town. Wendy Hoppe references the Grand Bargain at paragraph 15 of her statement. Towards the end of the December 9 mediation session CKIN brought up the idea of the "Grand Bargain." The Town indicated that a sale or

lease might require the publication of an RFP. But it was CKIN's impression that the RFP process was a formality rather than an outright requirement.⁵ By contrast, Mark Knebel claims that the museum did not "foil" and had no knowledge of the "grand bargain." Such a statement is preposterous. Mr. Knebel claims HVRM had no knowledge of the Mediation Agreement (the "Grand Bargain") that resulted from negotiations between the Town, Co-Alliance, and CKIN on December 9, 2015. Under the protocol governing the mediation, however, the Town indicated a desire to consult with Mr. Knebel by phone. Moreover, Mr. Knebel questioned the substance of the Grand Bargain in a December 22, 2015 email. See attached email between Rachel Arndt and Mark Knebel.⁶ Additionally, HVRM demonstrated knowledge of the Grand Bargain when it questioned Co-Alliance and CKIN's continued involvement with the rail line. (1816-1820, 1823-4) Considering that Mr. Knebel was copied on virtually every email involving the future of the line including settlement negotiations with CKIN and the bid process, it is sheer folly to think that he had no knowledge of this settlement proposal. (738-9, 741, 965).

HVRM had no input into the RFP or the operator selection and had no undisclosed contacts with potential operators. Mark Knebel claims that the

⁵ Legal research undertaken by CKIN's Indiana counsel under state law disclosed that the Town could enter into an operating agreement without going through an RFP.

⁶ Attachment 3.

museum had no input in the administration of the RFP or in selecting a new operator of the line and no input or “overbearing” hand in connection with the bid process. Knebel at paragraphs 15 and 16. Yet his statements contradict provisions in the amended RFP as well as Ms. Hoppe’s testimony. For example, section 5.1 of the RFP states “the Town will review the proposals and may invite selected members from the Museum, the North Judson Railroad Committee, shippers on the line and/or the Town attorneys to participate in the review of some or all of the sections of the proposals.”⁷ According to Ms. Hoppe, HVRM was given a small advisory role in the selection following the formal RFP process. Later she added that HVRM was allowed to provide input with HVRM’s role clearly identified and disclosed in the RFP. Hoppe at paragraphs 19 and 20. And, according to her, the Town even considered HVRM’s input although the successful respondent was not HVRM’s top choice. Hoppe at paragraph 21.

Mr. Knebel brought up the subject of a 2014 operating agreement that was drafted but never signed. He claims, wrongly, that the agreement was prepared by the Town’s attorneys with requested input from HVRM and its attorneys but other than supplying information about its operations, HVRM did not have any say over the contents of the agreement. Hoppe at paragraph 11.

⁷ Attachment 4.

But it is clear that HVRM did have a role in connection with an early version of that draft operating agreement that CKIN first obtained in 2015. (145, 151, 842, 1666) Ms. Hoppe acknowledges at paragraph 7 of her statement the role that HVRM had in providing information and drafting the document. She also acknowledges that HVRM was involved with searching for a new operator and bringing Frontier Rail to the attention of the Town. Hoppe at paragraph 10.

At one time the Town also considered issuing an RFP back in 2015 but apparently decided not to do so. Again HVRM was informed about all of these developments. Ms. Arndt invited HVRM's participation in that process stating in an email "if you want to be part of the process, you are welcome to work with me." (842-843).

Emails obtained through discovery document the extensive communications between HVRM and Frontier. (565, 567, 1666) Finally, it is clear from the numerous emails obtained through discovery that HVRM had multiple opportunities to meet the various bidders and show them around the railroad. (501, 508-510, 515) In paragraph 12, Mr. Knebel states that when the prospective operators were doing their due diligence, several made unsolicited visits to HVRM and asked questions which HVRM answered.

Simply stated, the Town constantly looked to HVRM for advice in connection with the railroad. The Town had no one on its payroll with any

railroad expertise. The firm it chose to administer the 2016 RFP, Faegre & Benson, has no rail transportation practice and presumably lacks any expertise in administering RFP's for selection of a railroad operator. It's only natural that the Town would rely extensively on Mr. Knebel's knowledge.

Accordingly, the Board should look with extreme skepticism on HVRM's claim that it had no role in connection with the 2016 RFP.

HVRM decision making and control over the Line. In paragraph 6 of her statement Ms. Hoppe claims that the Town Council is the owner of the Line and has not given HVRM any decision making authority or ceded any control of the Line. I respectfully disagree. For example, HVRM succeeded in making the Town purchase liability insurance for it at Town expense. Normally procuring insurance for a rail line would be the responsibility of the carrier. Also HVRM took upon itself the task of informing the Town about the status of freight cars located on the rail line, improperly labeling as "storage" freight cars that are on hold awaiting customer loading. (108) Finally, HVRM has been the party directly applying for grants and executing contracts with vendors on the Town's behalf, again normal rail carrier responsibilities.

Railroad safety. Simply stated, HVRM claims that CKIN is an "unsafe" railroad. CKIN will defer any detailed refutation of this allegation until it obtains information requested from the Federal Railroad Administration.

However, it feels compelled to respond to certain false assertions by both the Town and CKIN about the 2011 accident suggesting that CKIN's allegedly poor track maintenance was the cause.

In that regard, CKIN submitted an opinion prepared by Fletcher & Sippel attorney James Helenhouse in the confidential version of its Reply filing dated January 17, 2017. Mr. Helenhouse⁸ found that "CKIN was not negligent, and plaintiffs have no viable legal theory against CKIN. In contrast, HVRM has significant exposure, and plaintiffs are guilty of contributory negligence." Mr. Helenhouse then went on to say that the FRA's post-accident report shows that there were no defects in the area where the accident occurred and no indication that the track was anything other than class 1.

In closing a few remaining observations are in order. Regarding car storage, HVRM suggests that CKIN's car storage has adversely affected both its own car storage business and its ability to operate excursion trains. (108) In fact, CKIN's storage involves cars for Co-Alliance loading, part of its common carrier obligation, not cars for third party storage customers.⁹ With respect to insurance, CKIN has increased its own insurance coverage to \$10 million to

⁸ Mr. Helenhouse is a partner in the very same law firm that represents Lake State/CNJR in this proceeding.

⁹ Although HVRM claims CKIN is using cars to block HVRM's access to LaCrosse, the cars are only held in queue for Co-Alliance's future loading operations. From time to time, CKIN does utilize the unused line between English Lake and LaCrosse to hold the loading cars.

meet contemporary insurance requirements.¹⁰ It demanded that HVRM and/or the Town similarly increase their coverage. The Board should note that the agreements with CNJR similarly require the same \$10 million coverage. It is important to note that the current Town/HVRM insurance coverage is deficient as to CKIN because those policies do not indemnify CKIN. Presumably, this omission will be corrected for CNJR or any other new operator. Although the Town may be the title holder for the Line, it has “no skin in the game” as it did not provide any of the purchase price funding. Those funds were provided by the Federal Highway Administration (\$1,000,000), Indiana DOT (\$500,000), Co-Alliance’s predecessor (\$300,000), and the three counties served by the Line (\$50,000 each for a total of \$150,000).

I have attached to my statement a spreadsheet comparing provisions in the 2004 Operating Agreement under which CKIN provided service, a draft agreement prepared in 2014 or 2015 that CKIN obtained in 2015 (“the 2015 Agreement”), and a compendium of Agreements (“the 2016-7 Agreements”) between and among CNJR, HVRM, and the Town governing the CNJR and HVRM operations. Despite CKIN’s requests to the Town for an agreement between CKIN and HVRM covering their respective operations, no such agreement was ever produced. Mr. Knebel criticizes CKIN by stating at

¹⁰ An email from Frontier Rail suggests that the Town/HVRM coverage was inadequate at the time (863).

paragraph 18 of his submission that if the CNJR/HVRM protocols were “good enough” for CNJR, why wasn’t it good enough for CKIN? The simple answer is that it would be. I urge the Board to review the specific provisions regarding issues like insurance coverage, passenger restrictions, events of default, allocation of liability, and FRA waivers. These terms are far more favorable to CNJR than the arrangements (or perhaps lack thereof) under which CKIN has operated.

VERIFICATION

STATE OF INDIANA)

)

CITY OF FAYETTE CO.)

R. Powell Felix, being duly sworn according to law, hereby deposes and states that (s)he holds the position of President with affiant, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.

R Powell Felix

Subscribed to and sworn to before me, a Notary Public, in and for the County of Fayette in the State of Indiana, this 19th day of June.

Monica L Struewing
Notary Public



My Commission expires:



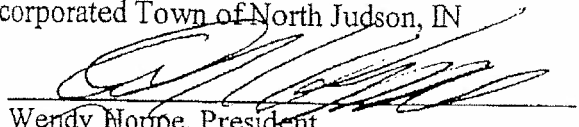
MEDIATION AGREEMENT

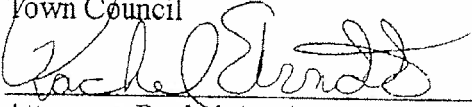
Parties appear this 9th day of December, 2015 for Mediation. The parties agree as follows:

- 1) The Town shall, within 60 days, of January 1, 2016, publish a Request for Proposals for a Lease Agreement wherein the Town will lease the rail line.
- 2) Request for Proposals will be due from interested Lessees within 30 days after publication.
- 3) The Town will select a Lessee and finalize a Lease Agreement 30 days after Requests for Proposals are received.
- 4) The parties agree that the current Operating Agreement dated August 31, 2004, including all extensions, shall be extended until May 15, 2016. The parties agree that there shall be no passenger service during the extension period in this Agreement.
 - a. In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the August 31, 2004 Operating Agreement. All parties will act in good faith.
- 5) The parties acknowledge and agree that this Mediation Agreement is contingent upon final approval of all parties, including a final vote accepting this Agreement by the full Board of the Town of North Judson at a Regular Meeting which is scheduled for December 21, 2015.
- 6) All revenue shares must be expended as per the Operating Agreement.

The Incorporated Town of North Judson, IN

By:


Wendy Noppe, President
Town Council

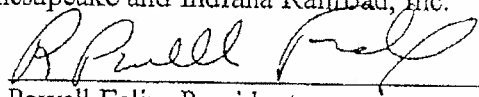

Attorney: Rachel Arndt

12/9/2015
Date

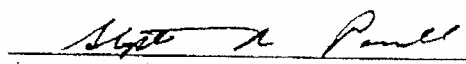
12-9-15
Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

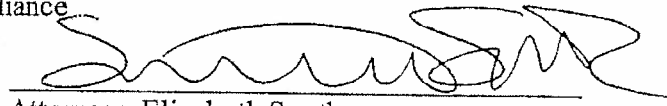
12-8-15
Date


Attorney: Stephen R. Pennell

12-9-15
Date

Co-Alliance

By:


Attorney: Elizabeth South

12-9-15
Date

SUPPLEMENT TO DECEMBER 9, 2015 MEDIATION AGREEMENT

The Town of North Judson ("The Town"), The Chesapeake and Indiana Railroad, Inc. ("CKIN"), and Co-Alliance (herein after collectively ("the Parties")) entered into a Mediation Agreement dated December 9, 2015, a copy of which is attached hereto. The Mediation Agreement in part extended the term of the August 31, 2004 Railroad Operating Agreement between The Town and CKIN to May 15, 2016, except that there would be no passenger service over any segment of the North Judson Line during the extended period.

Due to changes in circumstances since the execution of the Mediation Agreement on December 9, 2015, the Parties hereby agree to the following extension of the Mediation Agreement and further extension of the Railroad Operating Agreement, as further amended herein below:

- 1) The Mediation Agreement and term of the Railroad Operating Agreement are hereby extended up to and including August 15, 2016 ("the Extension).
- 2) The Town agreed to accept the Mediation Agreement at the meeting of The Town Board on December 21, 2015.
- 3) The Town has drafted and voted to accept a Request for Proposal ("RFP") which would authorize The Town to lease the rail line. In order to assist The Town with the RFP process, The Town has retained the services of an Appraiser and has hired Mr. David Gogol to assist The Town with the RFP process.
- 4) The Town intends for the RFP process to be completed within 60 to 90 days from RFP issuance, and CKIN agrees to cooperate with the Town during the RFP process. The Town's expectation is to select a lessee and finalize a lease agreement within 30 days after the completion of the RFP process, but no later than August 15, 2016.
- 5) CKIN filed a letter with the Federal Railroad Administration ("FRA") on or about May 3, 2016 advising that CKIN is no longer responsible for the North Judson to English Lake segment of the rail line under 49 C.F.R. Part 213. The Town and CKIN recognize and agree that The Town shall be responsible for the inspection and maintenance of that segment of the rail line under 49 C.F.R. Part 213 after May 3, 2016. If The Town permits the Hoosier Valley Rail Museum ("HVRM") to operate passenger service over that segment of the line after May 3, 2016, The Town will be solely responsible for any violations of FRA rules.
- 6) The Town and CKIN agree that the Railroad Operating Agreement is amended by this Supplement to the Mediation Agreement to reflect the changes in responsibilities set forth in subparagraph (5).
- 7) During the extension period (May 15 to August 15), the Town agrees that it will not permit the HVRM to operate any passenger service outside the North Judson to English Lake segment except with the written consent of both The Town and CKIN at their sole discretion. The Town further agrees that it will require that any requests for operation of such passenger service by HVRM during the extension period must be submitted to The Town and

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

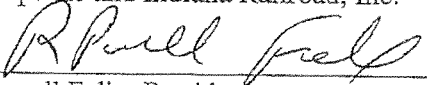
Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

5-12-16
Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

7

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

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The Incorporated Town of North Judson, IN

By:

Wendy Hoppe, President
Town Council

Date

Attorney: Rachel Arndt

Date

The Chesapeake and Indiana Railroad, Inc.

By:

Powell Felix, President

Date

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:



Attorney: Elizabeth South

5/11/2016
Date

D2

Page 1 of 1

ATTACHMENT 3

Mark Knebel

From: <rachel@peterson-waggoner.com>
To: "Mark Knebel" <knebel99@centurylink.net>
Sent: Tuesday, December 22, 2015 4:58 PM
Subject: Re: Question

Yes, with a BUT. We expect to be operating under a lease agreement by Easter. So, we are trying to look ahead to what the circumstances may be by Easter and get those potential issues resolved well ahead of time rather than having you all advertise the Easter train and then run into issues closer to Easter. Do I expect problems? No. However, I am under an obligation to try to avoid potential problems during this transition period. The east train is the next expected event after the Christmas trains, so I want to get out ahead of it to protect your interest and the town's interest in this event.

Sent from my iPad

On Dec 22, 2015, at 4:32 PM, Mark Knebel <knebel99@centurylink.net> wrote:

I understand, but if the present agreement is continuing then all the provisions are continuing correct?

Mark

----- Original Message -----

From: rachel@peterson-waggoner.com
To: Mark Knebel ; Donna Henry
Sent: Tuesday, December 22, 2015 4:27 PM
Subject: Re: Question

They don't. But if we are asking to carve out a specific allowance for the Easter train, don't you think it would be a good idea to have the biggest grain hauler on the line agree with us that it won't interfere with any car movement or otherwise pose a problem? I do. That way if CKIN tries to say it is a problem, I have co-alliance already saying that it is not a problem. That's why I would like all interested parties to get on the same page with it.

Sent from my iPad

On Dec 22, 2015, at 4:24 PM, Mark Knebel <knebel99@centurylink.net> wrote:

Why would CoA have any input on HVRM trains anyway?

Mark

After Co-A signed the
Mediation Agreement of
Dec 15, 2015

1/15/2017

CKIN in writing at least 30 days in advance of the proposed trip. Only two requests will be entertained.

8) In the event that a Lease Agreement is finalized between the Town and a Lessee, CKIN and the Town will voluntarily terminate the Railroad Operating Agreement. All parties will act in good faith.

9) To the extent that the Mediation Agreement, the Railroad Operating Agreement, any Agreements between The Town and INDOT, and any Agreements between The Town and HVRM conflict with the provisions of the ICC Termination Act ("ICCTA"), the ICCTA will preempt those Agreements and State or local law.

10) The Parties agree that the Indiana Courts will have jurisdiction to enforce this Mediation Agreement, and that any interpretation of this Agreement shall be in accordance with Indiana law.

11) This Supplement to the Mediation Agreement shall become effective upon approval of The Town's Council and execution by CKIN and Co-Alliance.

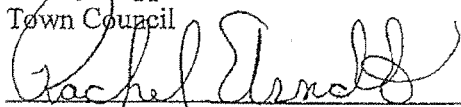
The Incorporated Town of North Judson, IN

By:


Wendy Moppe, President
Town Council

Date

May 12, 2016

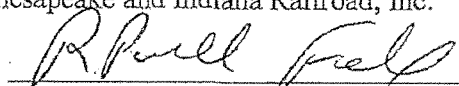

Attorney: Rachel Arndt

Date

May 13, 2016

The Chesapeake and Indiana Railroad, Inc.

By:


Powell Felix, President

Date

5-12-16

Attorney: Stephen R. Pennell

Date

Co-Alliance

By:

Attorney: Elizabeth South

Date

TOWN OF NORTH JUDSON SHORTLINE RAILROAD REQUEST FOR PROPOSALS (RFP)

June 15, 2016

AMENDED June 17, 2016

Pursuant to Section 3.5.2 of the RFP, the Town is amending the below RFP and is redistributing it to all known parties of interest and posting it for public inspection. This amended RFP supersedes any previous version and replaces all previous versions in totality.

1.0 INTRODUCTION

Through the issuance of this Request for Proposals (“RFP”) the Town of Judson (the “Town” or “North Judson”) is hereby soliciting competitive proposals from potential entities capable of entering into a lease of the Rail Line (defined below) from the Town (the “Lease Transaction”), while promoting economic development in the Town and surrounding counties. This RFP is not a solicitation for proposals to privatize the Rail Line, as the Town will retain ownership of the Rail Line. But rather, the Town seeks to benefit from an entity that can better leverage the private sector’s railroad and real estate experience, economic and community development experience and capital access in partnership with the Town. In addition, the Town desires to improve the speed and efficiency of communication between the operator of the Rail Line and the Town.

The selected lessee (the “Lessee”) will be expected to collaborate with the Town as well as the Counties of Starke, Porter and LaPorte, counties through which the Rail Line passes. In addition, the Rail Line currently provides rail services that benefit the Hoosier Valley Railroad Museum (the “Museum”) and on-line shippers, Co-Alliance, LLP (“Co-Alliance”) and Kova Ag Products (“Kova”). Finally, the Rail Line is operated under a Railroad Operating Agreement between the Town and Chesapeake and Indiana Railroad, Incorporated (CKIN), dated as of August 31, 2004 (the “Operating Agreement”). Respondents may work with any rail line operator and the selected Lessee will have the right to negotiate the terms of any necessary contract as it deems appropriate and in the best interest of the Town.

Each respondent should submit a plan to lease the Rail Line pursuant to a lease agreement with a term up to ten (10) years and that complies with any directive by the Surface Transportation Board (STB)(the “Lease Agreement”) and coordinate with the operator of the Rail Line, to create and execute economic development strategies using the Rail Line that benefit the Town and surrounding counties. A respondent should highlight in its proposal its experience leasing railroad-related real estate as well as creating and executing economic development solutions that are innovative, creative and feasible.

2.0 OVERVIEW

2.1. Rail Line History

Proposals by corporations must be executed in the corporate name by an individual authorized to sign. The corporate address must be shown below the signature. Proposals by partnerships must include the official business address of the partnership and the state/country of organization must be shown below the signature. Proposals by a joint venture must be similarly executed by all joint venture partners. Unsigned proposals will be considered non-responsive.

4.4 Statutory Requirements

This RFP is intended to comply with IND. CODE § 36-1-11-12, IND. CODE § 5-3-1 and other applicable federal and state laws. Pursuant to Ind. Code § 36-1-11-12, the Town is authorized to use this RFP process. ~~Indiana law prohibits the Town from leasing the Rail Line to any "ineligible person," defined in IND. CODE § 36-1-11-16 as a person who owes delinquent taxes, special assessments, penalties, interest or costs directly attributable to a prior tax sale on a tract of real property listed on the delinquent list under IND. CODE § 6-1.1-24-1, or a person who is an agent of an ineligible person.~~ All eligible respondents must be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

4.5 Security

~~The Town may require that the Lessee provide security for performance of its obligations under the Lease Agreement, including through a guaranty, letter of credit and/or an operation and performance bond. Respondent shall demonstrate its ability to obtain an instrument of security sufficient to cover a ten (10)-year lease arrangement should it be selected as the Lessee.~~

5.0. CRITERIA FOR SELECTION

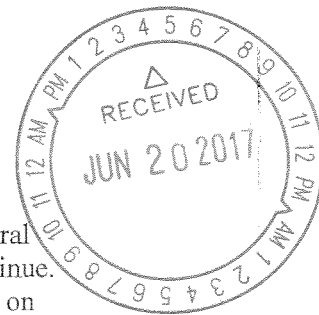
5.1. Overview of Selection Process

The Town will review the proposals and may invite selected members from the Museum, the North Judson Railroad Committee, shippers on the line and/or the Town attorneys to participate in the review of some or all of the sections of the proposals. Respondents may be asked to submit more detailed written information regarding operational and business planning as well as participate in an interview, or be available for a physical inspection of the property at the convenience of the Town. The chosen respondent will be invited to enter into a Lease Agreement with the Town of North Judson.

5.2. Ranking of Selection Criteria

The categories of the Selection Criteria and their relative weight are as follows:

<u>Issue/section</u>	<u>Pct.</u>
Qualifications of Respondent*	30%
Economic and Community Development	30%
Operations	20%



This simply is an attempt to derail HVRM's waiver requests from certain aspects of federal railroad regulations, to make HVRM operations more costly and too burdensome to continue. Immediately after the FRA approved of HVRM's 219 Waiver petition with modification on October 24, 2011, CKIN immediately applied for their Part 219 Waiver extension and was granted same on January 30, 2012, and HVRM never interfered once with CKIN's petition effort. This despite the fact that at least twice between 2009 and 2013 CKIN came to North Judson to pickup stored hopper cars during HVRM scheduled operations on CKIN, and CKIN not notifying HVRM prior to traversing the Wye at LaCrosse and heading down the North Judson branch of the rail line. Also, despite the fact that on several occasions since 2006, HVRM has found the track into LaCrosse, and at the LaCrosse Wye blocked with cars or CKIN locomotives without prior CKIN notification of such, on scheduled HVRM passenger excursions to LaCrosse.

Car Storage Hassle

Hoosier Valley Railroad Museum use to store empty railroad cars for companies who needed a place to store empty cars. HVRM would find companies needing storage, or in some instances companies inquired of HVRM if the museum had room to store cars. The opportunity to store empty railroad cars began in late 2008, and unfortunately ended in the fall of 2013 due to CKIN trying to take HVRM's car storage revenue from a customer who had contracted 50-empty hopper cars to HVRM for storage. The hopper cars would eventually get called out by the customer and sent to nearby Co-Alliance elevators on CKIN to loadout with soybeans.

The customer in this instance was LDAI, and in an email to both HVRM and CKIN on 7/18/2013, the VP of Rail Services for LDAI wrote: *Understand there is some disagreement going on there on who is storing what cars. LDAI sent 50-cars to HVRM, per contract agreement, and additional cars to CKIN per understanding with CKIN on the number you could store. Understand now there seems to be disagreement on who's cars are who's. Our billing records are very clear on what cars belong to who. We now have been charged storage on the same cars by both of you. LDAI employee has communicated clearly what cars belong to who but understand they were commingled and that cars are cars and as long as the correct number of cars get to each of you they don't necessarily have to be the correct numbers. Please work out these issues between yourself so we can pay storage charges on a timely manner. Right now we have billings from both of you on the same cars.*

CKIN's Powell Felix in an email on (7/22/2013): *"There were 50 cars billed to HVRM in June that were scattered at multiple locations. 48 of the cars arrived on CKIN in 3 different interchanges. 2 cars (MQRX 80022 and MQRX 80114) never arrived. The inbound interchanges from NS also included many cars that were not for HVRM. LDC has loaded 3 batches of cars (none of the HVRM cars) including cars that came in the same interchanges as the HVRM cars. 11 loads are still sitting on CKIN awaiting interchange back to NS. Further complicating the logistics of getting the covered hoppers sorted out was the tank cars that were sent to HVRM storage and then needed back out of storage within a couple of days of CKIN getting them to North Judson. There are no empty covered hoppers stored on HVRM tracks and CKIN has all*

Mark Knebel

From: "Mark Knebel" <knebel99@centurylink.net>
To: "Rachel Arndt" <rachel@peterson-waggoner.com>
Sent: Tuesday, June 23, 2015 8:28 PM
Subject: Re: Question
Rachel,

I took off work today, CoA wanted to bring in WATCO reps for myself and Richard to entertain. Nice guys for sure and they all told the same "this is what we would do plan" as all the rest, but my gut instincts are not comfortable going with them. They didn't even ask to visit through HVRM and see the equipment; operating locomotives and passenger carrying equipment GW is a bigger company than WATCO and the only reason we entertained them was because the Town's rail line crosses one of their GW lines at Hanna. It would have been a direct connect.

Frontier came to us, we didn't have to go out and seek them. They want to do us a good job and work with HVRM. They know the tasks ahead and are willing to work the agreement.

There is an answer to Powell's BS. "The Town has no intentions of re-hiring CKIN or any subsidiary of Indiana Boxcar Corp", or "accepting CKIN or any subsidiary of Indiana Boxcar Corp as a subcontractor to operate the Town's rail line, now and forever more." They shouldn't care how the process is being handled, because they don't have an ice cube's chance in hell of ever operating the rail line again after their contract has expired.

Call Chuck Lukmann. He is the commuter rail line's attorney (NICTD - Chicago South Shore & South Bend Railroad), and has municipal clients as well. HVRM used him for some guidance with the indemnity wording. See what he thinks.

I think we're fine myself. The Town came up with the specs, we have now entertained 3 railroad companies, and hosted a 4th railroad company around the line, and entertained a proposal from CoA. We have been more than diverse in options/operators to fit the Town's specs for railroad operator and Frontier is fine with the agreement. WATCO said they would not sign the agreement as it is written.

Question- What is CKIN going to do to remedy the past due Town's 3QRevShare?

Thank you for all you do.

Mark

----- Original Message -----

From: Rachel Arndt
To: Mark Knebel
Sent: Tuesday, June 23, 2015 9:52 AM
Subject: Re: Question

Mark:

Just so you are aware, Powell is now crying foul because we have not submitted the new operator for bid. Never mind the fact that he got the project without a bid process, but his attorney is now asking questions about why we did not submit it to bid and trying to argue that we should have.

This will likely slow us down, which of course is Powell's plan, but we need to ease off on pushing the

1/3/2017

North Judson Railroad Advisory Committee
Thursday, June 4, 2015

A meeting of the North Judson Railroad Advisory Committee was held on Thursday, June 4, 2015. The meeting was conducted at the North Judson Public Library, commencing at 3pm. Attending were: Mark Knebel for HVRM, Richard Warner for Town of North Judson and John Brammeier for CoAlliance.

Reviewed the Minutes from April. No meeting held in May. The last CKIN traffic report was for March 2015; stating 2,671 cars during 8-months of contract year Y11. CKIN supplied a May 2015 Track Maintenance Record, but none received for the months of March or April. CKIN has not provided the Town with Revenue Share for Y11Q3 covering the months of Feb-Mar-April, 2015.

John Brammeier reported that 7 or 8 unit trains are yet to be handled before the end of railroad contract year Y11 or Aug 1, 2015.

The committee reviewed the latest in regards to the termination of CKIN as railroad operator at the expiration of the railroad operating agreement on 12/31/15. Frontier Rail, the now #1 operator candidate was sent an updated draft agreement on 6/1/15 per the consent of the Town Council. John Brammeier stated that reps of CoA did meet with representatives of Frontier in May.

Mark Knebel gave an update of the progress of the TE-Tie Project. Contractor Alltrack has about one dozen ties to install and then surface work will commence once a tamper becomes available. The project should be completed by the end of June.

Rich Warner was going to call Powell Felix and get an update on the IRSF-14 bridge project. The committee reviewed the specifics of the project.

Mark Knebel reported that according to INDOT's web site CKIN received a FY15 Grade Crossing Fund grant. Per the Minutes of July 10, 2014 CKIN was going to apply to resurface old US 30 and Hopper St in Hanna-LaPorte County. The estimated match is 50% or around \$10,000 from the RRCapFund.

Meeting adjourned at 4pm.

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee

Mark Knebel

From: "Mark Knebel" <knebel99@centurylink.net>
To: "Rachel Arndt" <rachel@peterson-waggoner.com>
Cc: "Chuck Lukmann" <clukmann@hwllaw.com>
Sent: Tuesday, March 22, 2016 1:39 PM
Subject: Re: Last night's meeting
Rachel,

Too many people for me; I'm not a crowd person. I went home after picking up the Minutes from Alicia.

CKIN has the HVRM 2016 train schedule as of 2/12/16. Any additions or changes to the schedule is given a 30-day notice.

HVRM cannot publish a schedule, then because of a grain train, cancel. People purchase tickets way in advance, family reunions, school outings, club outings. HVRM excursion trains have right over freight.

I already sent you the "additional insured" info on the Town and CKIN; the current 2-mil. HVRM is insured; as years past.

I have no idea on when the 10-mil stuff will take effect, McRail hasn't even invoice for it yet.

I called Chuck, he was to call Tom. I'll cc' Chuck to this message.

When is the RFP going to be published? I have operators asking. One was going to be at the meeting last night, from Chicago. I don't know if he made it or not.

Mark

----- Original Message -----

From: Rachel Arndt
To: Mark ; Rachel Arndt ; Alicia Collins
Sent: Tuesday, March 22, 2016 11:51 AM
Subject: Last night's meeting

Mark:

I swear I thought I saw you coming in behind me last night. The Town discussed a few railroad issues. The first is Co-Alliance's suggestion that perhaps everyone on the line coordinate their excursions and come to an agreement whereby HVRM could have X amount of passenger excursions per month with at least 30 days written notice. That means that sometimes the passenger excursions would have to be moved to facilitate freight, but that there will be times when freight will need to wait for the passenger excursions. That seems to me a reasonable solution given the dueling interests in the line. The Town seemed agreeable, but I had hoped for your feedback, since ultimately the Town will be doing little coordinating on their own.

I told the Town that you had responded regarding the revenue shares. I am going to follow up with CKIN's attorney and share your calculations.

I have been in contact with Omega. I am also going to forward your Omega emails along with the Agreements on to the Council so that they can review them and be prepared to give me a recommendation regarding the insurance requirements. Omega told me that they are waiting for a

12/18/2016

Mark Knebel

From: "Mark Knebel" <knebel99@centurylink.net>
To: <s.gibson@ewgrr.com>
Sent: Wednesday, June 22, 2016 7:15 PM
Subject: Re: CKIN/HVRM

Steve,

Some CoAlliance data are published at the STB web site, in a letter to the STB last year.

At the STB search window type the following data.

AB-1232 / filings / 7-1-2015

The letter from CoAlliance should be at the top of the list.

Mark Knebel

----- Original Message -----

From: <s.gibson@ewgrr.com>
To: <knebel99@centurylink.net>; <kingsbury@centurylink.net>
Sent: Wednesday, June 22, 2016 5:48 PM
Subject: CKIN/HVRM

- > Guys,
- >
- > This is Steve Gibson, the Director from US Rail Partners, Ltd. I have met
- > some of your group at the museum before and at the North Judson Town Hall
- > meeting a number of weeks back.
- >
- > We are submitting an RFP to the town of North Judson to be (hopefully) the
- > selected operator of the CKIN. Our President, Donald Purdie (yes, he's
- > Bill Purdie's son from the Southern Steam days) is here in town for a
- > couple of days as we have been inspecting the CKIN line by walking and
- > examining as much of the line as possible in all three segments.
- >
- > I was hoping to be able to meet with some of the HVRM people out at the
- > Museum area in North Judson (or wherever) to have Donald and myself
- > discuss and work with your group on the possibilities of what can be done
- > to improve conditions and gain potential new business for your group. This
- > is an important part of the RFP process established by the town's RFP
- > request.
- >
- > Donald is staying at the Quality Inn in Valparaiso (across from Walmart)
- > today and tomorrow and I just live in the Lake of the Four Seasons toward
- > Crown Point.

Mark Knebel

From: "Mark Knebel" <knebel99@centurylink.net>
To: "Mike Stickel" <stickelm@lsrc.com>
Cc: "John Rickoff" <rickoffj@lsrc.com>; "Richard Warner" <warnerup4014@gmail.com>
Sent: Wednesday, November 09, 2016 4:44 PM
Subject: Re: HVRM October

Mike the weather in October was picture perfect. HVRM carried 2,149 passengers over the 5-Saturdays. No passenger operations during November, and then Santa Trains the first 3 Saturdays of Dec, and thats a wrap for 2016.

YTD passenger count is 4,252, and HVRM has entertained 48 Guest Engineers or Throttle Time program participants.

Different types of work being done around HVRM during November, before winter arrives.

We were hoping CNJR would obtain its authority by now, so HVRM can order in some storage cars to hibernate on our track during the winter season.

Mark Knebel
HVRM

----- Original Message -----

From: Mike Stickel
To: Mark Knebel
Cc: John Rickoff ; Richard Warner
Sent: Friday, November 04, 2016 8:11 AM
Subject: RE: LaCrosse Elevator site

Good morning Mark,

Thank you for the follow-up. We are very much interested in this opportunity, but it is hard for us to really get it in process until we finalize agreements and have a good timeline on change in operators. We are very eager to get our feet on the ground and start working together.

How are things going at HVRM?

Thanks,

Mike Stickel
Lake State Railway
Cell: 989-274-4171

From: Mark Knebel [mailto:knebel99@centurylink.net]
Sent: Friday, November 04, 2016 6:25 AM
To: Mike Stickel
Cc: John A. Rickoff; Richard Warner
Subject: Re: LaCrosse Elevator site

Mike,

1/14/2017

Another message from Mr. Malecki.

Mark

From: Joyce Malecki <pjescwmalecki@msn.com>
To: "HVRM@yahoo.com" <HVRM@yahoo.com>
Sent: Thursday, November 3, 2016 9:04 PM
Subject: Attention: Mark Knebel

Dear Mark,

I am Paul Malecki and I purchased the elevator in LaCrosse, IN. I was wondering if the new railroad operators would be interested in putting a rail spur to service the elevators.

Please forward this information to them and then let me know if they are interested in this prospect.

My cell number is 219-363-6786. My home phone number is 219-754-2522.

Thank you very much.

Paul Malecki
11702 West. St. Rd. 8
La Crosse, IN 46348

----- Original Message -----

From: [Mark Knebel](#)
To: [Mike Stickel](#)
Cc: [John A. Rickoff](#)
Sent: Tuesday, October 18, 2016 9:43 PM
Subject: Re: LaCrosse Elevator site

Thats good to hear Mike.

On another note, **Mr. Paul Malecki 1-219-363-6786** c, called me today. He is a large farm operation around LaCrosse and now owns the LaCrosse elevator (former CoA facility). He is extremely interested in meeting with Lake States to see about rail service to the old elevator site. I did put you in contact with Lee Nagai earlier, who is also interested in the project, (not a owner or partner), but a large grain producer in the area. Lee is a civil engineer besides being a farmer. The old PRR r/w adjacent to the elevator and runs next to the CNJR, is owned by farmer Gorski. According to Paul Malecki, Gorski is ok with rebuilding the track on the old PRR r/w to the elevator site.

Anyway, I told Paul I would contact Lake States Rwy for him. I would appreciate if you could call Paul to discuss this subject further.

Mark Knebel

----- Original Message -----

From: [Mike Stickel](#)
To: [Mark Knebel](#)
Cc: [John A. Rickoff](#)
Sent: Tuesday, October 18, 2016 9:21 PM

1/14/2017

Subject: Re: HVRM Oct 2016 Newsletter

Thank you Mark. We look forward to wrapping the documentation up soon and to working together. Hopefully sooner rather than later.

Mike Stickel
Lake State Railway
989-274-4171

1/14/2017

Mark Knebel

From: <rickoffj@lsrc.com>
To: "Mark Knebel" <knebel99@centurylink.net>
Cc: "Mike Stickel" <stickelm@lsrc.com>
Sent: Tuesday, October 18, 2016 9:05 PM
Subject: Re: LaCrosse Elevator site

Thanks Mark. We believe we are close to completing an agreement with North Judson and close on the operating protocol agreement. Hope to be able to tell you more in the near future.

John

1/14/2017

Subject: Re: Co-Alliance

From: Rachel A. Arndt (rachel@peterson-waggoner.com)

To: hvrn@yahoo.com;

Date: Thursday, January 15, 2015 7:50 PM

Mark:

Your recommendation needs to be directed to the Council, not to me. I am not a decision maker in this matter. You can discuss it during Monday's meeting.

On January 15, 2015, at 7:19 PM, Hoosier Valley RR Museum <hvrn@yahoo.com> wrote:

Rachel,

I strongly believe we need to be dialoging with Frontier and refining and defining aspects of the "draft ops agreement" where need be. Frontier representatives have met with us (Town, HVRM and CoA) on several occasions. Frontier has pretty much accepted the concepts in the draft new ops agreement. We did agree to extend one timeline period on track work, and I'm exploring some insurance matters that could be added to satisfy Frontier.

Lastest message from Frontier agents below.

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee
574-225-0255 c

----- Forwarded Message -----

From: David Anzur <da@frontierrail.com>
To: 'Hoosier Valley RR Museum' <hvrn@yahoo.com>
Cc: 'Paul Didelius' <pd@frontierrail.com>; 'Robert Warrick' <rw@frontierrail.com>
Sent: Thursday, January 15, 2015 6:04 PM
Subject: RE: Co-Alliance

Mark,

We sent a letter to John to give assurance on our rate structure on December 16th about a month ago. John acknowledged that he received the letter and stated that he was going to discuss internally at Co-Alliance and get back to us. Haven't heard from them. We can reach out to him. Has there been any discussion with the Town or the Museum?

Paul and I were discussing earlier this week. Is there anything that we need to be working on such as the agreement? You indicated that there may have been some changes that were made to the proposed contract. Let us know if you have something new or changed.

David Anzur

Subject: Re: Co-Alliance

From: Paul Didelius (pd@frontierrail.com)

To: hvm@yahoo.com;

Cc: rw@frontierrail.com; da@frontierrail.com;

Date: Wednesday, January 21, 2015 7:34 AM

Mark:

Co-Alliance operating - interesting.. Certainly within capability of grain company.. Biggest reason for them not to - requires administration of a federally regulated railroad (operator management), or building up of same skill set in-house. Biggest reason for Town not to - grain company operations don't have much history of bringing on new freight customers, or having much wish to bring or hold the track to a higher track class. Not universally true - but that's the experience.

I'd like to hear more - who would you suggest I call?

Thank you -
Paul Didelius

On Jan 21, 2015 2:22 AM, "Hoosier Valley RR Museum" <hvm@yahoo.com> wrote:

All,

At the Town Council meeting on Monday night I presented the Council with a \$51,015 check from HVRM as a result of the match money fund raising campaign for the supplemental work (extra ties) for the TE-Tie Project. Of the \$102,413.20 of local cash match for the tie project, HVRM is supplying 64% (\$51,015 + original \$15,000), Town's RRCapAcct 21%, Starke County EconDev 15%. The monies are all in place and INDOT has secured the federal funds portion of \$409,652.80. Simply waiting on the Notice To Proceed from INDOT so an agreement with AllTrack can be executed and the project proceed.

Town Council Attorney Rachel Arndt suggested that Frontier hold tight for now. CoA wanted to propose operating the railroad and she wants to give them the opportunity to present their proposal, thoughts and views. This idea was floated earlier by CoA and I was opposed to it. The Council will not entertain a proposal that includes the present operator having any future on the rail line, nor will HVRM.

Yes, HVRM has done car storage and would like to continue, but not until after this tie project is completed in the North Judson area. Then we'll go back to looking for car storage, despite what CKIN has said to counter our effort.

HVRM has stored empty non-haz cars for Union Tank Car, Continental Tank Car, Car Math and Louis Dreyfus. CKIN has threatened to not bring HVRM any more car-storage cars, but I haven't tested CKIN yet on that tid-bit.

Lets keep in touch.

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson RR Adv Com
574-225-0255 c

Mark Knebel

From: "Rachel Arndt" <rachel@peterson-waggoner.com>
To: "Mark Knebel" <knebel99@centurylink.net>; "Rachel Arndt" <rachel@peterson-waggoner.com>;
"Alicia Collins" <njclerk@embarqmail.com>
Sent: Monday, March 07, 2016 3:08 PM
Subject: Re: RevShares Due

Mark:

I want to bounce an idea I had off of you. Tell me what you think. Our Mediation Agreement says there will be no passenger excursions until we have a new Lease Agreement in place. Obviously, you all are scheduling passenger excursions. The Easter Train I think we will have resolved here shortly, and I'm not worried about that. But, I am worried about upcoming passenger excursions, particularly if we are delayed much longer in waiting for a rental value for the line to publish the RFP. I know you are worried about that too.

What do you think about telling INDOT about our concerns at Thursdays meeting and asking them to write the Town a letter reminding the Town of the 2004 INDOT/Town Agreement that says that freight operations are not to take precedence over the passenger excursions? Co-Alliance and CKIN always want to argue that freight takes precedence under the STB, and I think that having INDOT specify their position may give us a trump card. I know the Town knows about the provision, but INDOT may be able to provide some authority. Any reason that this is a bad idea?

1/15/2017

Mark Knebel

From: "Rachel Arndt" <rachel@peterson-waggoner.com>
To: "Mark Knebel" <knebel99@centurylink.net>
Cc: "J Davis" <davisph@me.com>; "Alicia Collins" <njclerk@embarqmail.com>; "Nathan Bradley" <bradleyf400@gmail.com>; "Brown, Joshua" <big_josh_1@hotmail.com>; "Jane Ellen Felchuk" <jefelchuk@gmail.com>; "Wendy Hoppe" <plumb_her@yahoo.com>
Sent: Friday, March 18, 2016 2:33 PM
Subject: Re: Sunday, April 3
 Mark:

My ultimate thought is that if you all are going to go just to Lacrosse, we should be good. I'll follow up on my end. Thanks for the prompt response Mark.

On Fri, Mar 18, 2016 at 3:21 PM, Mark Knebel <knebel99@centurylink.net> wrote:

The Sunday, April 3 date is for a possible motor car outing from HVRM. Members of the Great Lakes Railcars organization have their annual meeting at the HVRM depot on a Sunday in the spring. I went ahead and notified the CKIN local managers (Jim and Rob) on the date and destination on March 3 (**see email below**). **I just spoke to Jim at CKIN an hour ago, and he saw no problem going at least to LaCrosse that Sunday and I offered to only go to LaCrosse if there was a grain train at Malden, or as far west to Malden as the motor cars could get to.** We both agreed to touch base the week before.

I have no confirmation that any motor cars are coming that Sunday, but they usually ask about the possibility and since they are supporters of the rail line (they submitted a support letter for the TE funds on our behalf to INDOT in 2004), I wanted to offer up the chance to use the rail line on that Sunday.

The motor cars would operate under the HVRM flag so to speak, so you might call it an HVRM event. Powell is forcing the Town/HVRM to carry \$10-mil in liability insurance, what's he worried about? I'm going with them as a qualified person on the rail line and there really is no problem. Jim didn't think so either. Again, the group may not run, but if they do, I see no problem. We've done this before, and the Rail Car guys are NARCOA qualified and have operated on short line railroads all over the mid-west.

Powell is simply creating heaps of manure, which he is full of.

Mark

----- Original Message -----

From: Mark Knebel
To: Jim Montgerard
Cc: Rob Byrd
Sent: Thursday, March 03, 2016 6:39 AM
Subject: HVRM Schedule Update 3/3/16

CKIN,
 HVRM schedule updates:
Sunday, April 3 - HVRM motor car run/ Great Lakes Railcars. **North Judson - Malden.**
Saturday, August 13 - HVRM trains - Hanna Festival - **Hanna to Union Mills.**
 Mark Knebel
 HVRM
 574-225-0255 c

----- Original Message -----

From: J Davis
To: Alicia Collins
Cc: bradleyf400@gmail.com ; Brown, Joshua ; Jane Ellen Felchuk ; Wendy Hoppe ; rachel@peterson-waggoner.com ; [Knebel Mark](mailto:knebel99@centurylink.net)
Sent: Friday, March 18, 2016 2:15 PM
Subject: Re: Early April Trains for Co-Alliance

1/8/2017

Since when does co- alliance control the scheduling of OUR rail? Also April 3rd is a Sunday. We don't run on Sunday's. I'm confused alittle bit by how we get told what we need to do. Maybe Rachel can clarify this for me? Thanks

Justin Davis
Davis Plumbing & Heating
412 Lane Street
North Judson IN 46366
574-896-2321

On Mar 18, 2016, at 8:40 AM, Alicia Collins <niclerk@embarqmail.com> wrote:

Hello,

Please see below from Rachel.

Thanks,

Alicia

From: Rachel Arndt [<mailto:rachel@peterson-waggoner.com>]
Sent: Friday, March 18, 2016 8:26 AM
To: Alicia Collins; Mark; Rachel Arndt
Subject: Fwd: Early April Trains for Co-Alliance

All:

Here is a follow up email that I received from Kevin McGuire from Co-Alliance. He is the new operations manager, from what I understand. He is concerned about the April 3, date because of the hauling schedule. Alicia, please share this email with the Counsel.

----- Forwarded message -----

From: **Kevin McGuire** <Kevin.McGuire@co-alliance.com>
Date: Thu, Mar 17, 2016 at 5:20 PM
Subject: Early April Trains for Co-Alliance
To: Thomas Wilcox <twilcox@gkgglaw.com>, "rachel@peterson-waggoner.com" <rachel@peterson-waggoner.com>
Cc: Elizabeth South <Elizabeth.South@co-alliance.com>

Tom and Rachel –

As requested, I spoke with John Stark (my Grain Merchandiser), regarding the April 3rd date. Looks like we may have some conflicts.

There is a soybean train on our siding now. Customer indicated they are leaning toward a delivery the first week in April. Also, we have two corn trains scheduled for the first part of April. We will not know specific dates until we get closer to the end of the month. John also indicated he thought Mosaic had a train scheduled for around that

1/8/2017

time.

As an FYI, we are anticipating relatively heavy traffic for Co-Alliance during April and May. The market is indicating this is an optimal time for us to sell our grain, so we are anticipating greater than average traffic.

As a side note, Powell Felix mentioned the concern to John, while discussing train scheduling today. So I know it is on CKIN's mind.

Kevin

<image001.jpg>

Kevin McGuire

Vice President – Grain Operations

Co-Alliance LLP

5250 E US Hwy 36

Building 1000

Avon, IN 46123

Phone: 317.745.1252

Email: kevin.mcguire@co-alliance.com www.co-alliance.com

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1/8/2017

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Mark Knebel

From: <mcfarland@aol.com>
To: <knebel99@centurylink.net>
Sent: Friday, October 16, 2015 8:23 AM
Subject: Re: Status ?

Nothing new, Mark. It is virtually certain that CKIN will hold over as rail line operator while the long term status of the Rail Line plays out.

Tom

-----Original Message-----

From: Mark Knebel <knebel99@centurylink.net>
To: mcfarland <mcfarland@aol.com>
Sent: Fri, Oct 16, 2015 4:08 am
Subject: Re: Status ?

Anything new this week Tom? Down to about 77-days until Dec 31.

Mark

----- Original Message -----

From: mcfarland@aol.com
To: knebel99@centurylink.net
Sent: Friday, October 09, 2015 9:41 AM
Subject: Re: Status ?

Report to the Town on the CKIN claim re capital improvements has been submitted . Confidentiality agreement with CKIN prohibits me from giving you a copy of the Report. I can say, however, for your ears only, that the materials submitted by CKIN do not support any recovery by CKIN. The Town is considering whether to make an offer to Co-Alliance to sell or lease the rail line, with a condition that CKIN, Felix or any affiliate not be the operator of the line.

Tom

-----Original Message-----

From: Mark Knebel <knebel99@centurylink.net>
To: mcfarland <mcfarland@aol.com>
Sent: Fri, Oct 9, 2015 4:35 am
Subject: Re: Status ?

How's it looking Tom?

Mark

----- Original Message -----

From: mcfarland@aol.com
To: knebel99@centurylink.net
Sent: Wednesday, September 30, 2015 9:59 AM
Subject: Fwd: Status ?

Hi Mark. I have not pressed the Town to select a replacement rail operator or make a settlement offer pending my completion of review of the extensive materials provided by CKIN in support of their claimed book value of capital improvements made to the rail line. I think it very important to eliminate or substantially reduce CKIN's bargaining power before considering settlement, mediation, or continued litigation. I have now completed review of the materials and am in the process of preparing a report of my findings to the Town. I will give you

1/15/2017

a copy of those findings. At that point, it will be up to the Town to decide how they want to proceed.

Tom

-----Original Message-----

From: Thomas McFarland <tmcfarland@ameritech.net>
To: mcfarland <mcfarland@aol.com>
Sent: Wed, Sep 30, 2015 7:54 am
Subject: Fw: Re: Status ?

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St.,
#1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)

--- On
Wed, 9/30/15, Mark Knebel <knebel99@centurylink.net> wrote:

> From: Mark
> Knebel <knebel99@centurylink.net>
> Subject: Re: Status ?
> To: "Thomas
McFarland" <tmcfarland@ameritech.net>
> Date: Wednesday, September 30, 2015,
4:45 AM
> Tom, what does the snake
> swamp look like now? We're roughly
90-days from
> Dec 31 and no new operator
> "officially" in the basket. I
don't
> understand
> why the revised selection
> process cannot move
forward, I'm looking at
> implications for next years ops and maintenance
>
issues. It was all to be
> covered with the
> new draft ops agreement with a
new operator.
>
> Mark
>
>
>
> -----
> Original Message -----
>
From: "Thomas
> McFarland" <tmcfarland@ameritech.net>
> To: "Mark Knebel"
<knebel99@centurylink.net>
> Sent: Wednesday, September 23, 2015 9:45 AM
>
Subject: Re: Status ?
>
>

1/15/2017

Mark Knebel

From: <mcfarland@aol.com>
To: <knebel99@centurylink.net>
Sent: Friday, October 09, 2015 8:41 AM
Subject: Re: Status ?

Report to the Town on the CKIN claim re capital improvements has been submitted . Confidentiality agreement with CKIN prohibits me from giving you a copy of the Report. I can say, however, for your ears only, that the materials submitted by CKIN do not support any recovery by CKIN. The Town is considering whether to make an offer to Co-Alliance to sell or lease the rail line, with a condition that CKIN, Felix or any affiliate not be the operator of the line.

Tom

-----Original Message-----

From: Mark Knebel <knebel99@centurylink.net>
To: mcfarland <mcfarland@aol.com>
Sent: Fri, Oct 9, 2015 4:35 am
Subject: Re: Status ?

How's it looking Tom?

Mark

1/15/2017

Mark Knebel

From: "Rachel Arndt" <rachel@peterson-waggoner.com>
To: "Mark Knebel" <knebel99@centurylink.net>; "Rachel Arndt" <rachel@peterson-waggoner.com>
Sent: Wednesday, August 12, 2015 7:07 AM
Subject: Re: Replacement Operator

Mark:

I apologize, I don't feel like I answered your question at all in my last email. To answer your question about the operating agreement more clearly....I thought I would put on the RFP a couple things about the agreement:

1. Can request draft operating agreement to review;
2. Town and Operator will finalize agreement after award.
3. Validity of selection and operating agreement contingent upon STB decision. I want to make that really clear, because I believe we will finalize the replacement operating process much faster than the STB decision.

On Wed, Aug 12, 2015 at 8:02 AM, Rachel Arndt <rachel@peterson-waggoner.com> wrote:

Mark:

We are in the process of preparing the RFP, not in finalizing an operating agreement. I've got it mostly drafted, should have something out to you this week to review. Like I said, I am going to use most of the last RFP to speed things up. I double checked with Tom, he does not think it appropriate to name a replacement right now, said he is ok with the time it may take us to do the RFP. He says it will not hurt what he is doing at all.

On Wed, Aug 12, 2015 at 4:32 AM, Mark Knebel <knebel99@centurylink.net> wrote:

Rachel,

Where we at on this?

Are we planning to attach the draft ops agreement to the RFP and solicit: "accept this agreement or propose better"?

Mark

----- Original Message -----

From: Rachel Arndt
To: Mark Knebel ; Rachel Arndt ; Donna M. Henry
Sent: Thursday, August 06, 2015 8:10 AM
Subject: Re: Replacement Operator

Mark:

We have to do this because while the project is not a Public Work, State statute requires that for Operating Agreements between a private entity and a public one, Requests for Proposals must be published. I would like to dispose with doing this as much as the next person, because frankly, the whole process has been a giant pain. However, the last thing that we want to do is not follow the proper procedure because CKIN will gladly sue the Town over it. The last thing that I want to see happen is for the Town and our new operator to be liable for not following procedure. It is my opinion that the Town made an error in 2004 by not publishing notice. I believe that CKIN also knows this, but does not want to admit it.

I have spoken to both Tom and the Town about this, each agree that that is the proper thing to do. Paul asked to meet with me while I was on vacation, and I'm not sure how appropriate it is for a proposed operator to meet with the Town's legal representation. If you want to be part of the

1/12/2017

process, you are welcome to work with me. If not, I am going to work on getting the request for proposal put together on my own so that it can be published as soon as possible. I am hoping to have it done by next meeting so that we can publish it and make a decision quickly.

On Wed, Aug 5, 2015 at 8:41 PM, Mark Knebel <knebel99@centurylink.net> wrote:

Why are we doing this? I don't understand the concept here. Its a freaking lease to operate per acceptance of the agreement.

Frontier is ready to jump in accept the draft ops agreement and help at the STB level.

We've already wasted over a year's time and expense if we go this route now.

I am very frustrated. I wish you would call Paul D of Frontier, he was in Ohio all of July and wanted to come visit and discuss, but nobody would meet with him.

I can help with information/data, but I don't have a clue here what this process below is suppose to accomplish.

Mark

----- Original Message -----

From: Rachel Arndt

To: Mark ; Rachel Arndt

Sent: Wednesday, August 05, 2015 4:52 PM

Subject: Replacement Operator

Mark:

I have pulled the statute for the publication of invitations for proposals. The proposal invitation needs to have:

1. Factors/Criteria that will be used in evaluating the proposals;
2. A statement concerning the relative importance of price and the other evaluation factors;
3. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility; and
4. A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

Tom's last few emails lead me to believe that we really do need to get a proposal invitation published. Do you think that you and I can work together to get a proposed invitation done so that we can get it filed ASAP? I'm not having a lot of luck getting volunteers from the Counsel to assist.

Mark Knebel

From: "Rachel Arndt" <rachel@peterson-waggoner.com>
To: "Donna M. Henry" <njclerk@embarqmail.com>; "RALPH CUMMINS" <tkcummins@embarqmail.com>; "Joshua" <big_josh_1@hotmail.com>; "J" <davisph@me.com>; "Wendy Hoppe" <plumb_her@yahoo.com>; "Jane" <jefelchuk@gmail.com>; "Rachel Arndt" <rachel@peterson-waggoner.com>; "Mark" <knebel99@centurylink.net>
Sent: Wednesday, July 01, 2015 11:23 AM
Attach: STB Letter.Executed.6-30-15.pdf
Subject: Fwd: Docket No. AB-1232, Town of North Judson - Adverse Discontinuance of Service - in LaPorte, Porter and Starke Counties, IN

All:

Below is an email from Attorney McFarland that attaches a letter that was submitted by Co-Alliance to the Surface Transportation Board. I immediately called Attorney McFarland who tells me that this is a major blow to our ability to successfully remove CKIN from the line. He says that we are not entirely dead in the water, but that he puts our chance of success at less than 50%.

There is one major decision that must be made at Monday's meeting, and it is not whether to have a final vote on Frontier. The decision needs to be whether the Town wants to continue to fight CKIN with the Surface Transportation Board, knowing that it will be bitter, expensive, and with the odds now against us. Or, if the Town wants to withdraw its Petition with the Surface Transportation Board and then re-negotiate terms of the Operating Agreement with CKIN. Both are difficult, unhappy decisions, but this is a decision that must be discussed and decided on Monday.

Meanwhile, Powell, through his attorney, has made several public records requests to Donna. She answered, and I received an email from Attorney Hugon complaining that no balance sheets are available for the railroad and also complaining that the Surface Transportation Board filings indicate that we have decided on an operator. I am handling those issues and told Attorney Hugon that I would review and follow up with him after the Board meets.

Attorney Hugon also insists that the project must be competitively bid. When I reminded him that Powell himself did not competitively bid, I was sent specs for the projects from 2004 that look very much likely competitive bid specs. Donna, I need you to immediately search for the minutes where Powell was selected. Search also for the minutes leading up to the decision, and search to see if a competitive bid notice was ever published. Get those to me ASAP.

I had a phone conference as well with Paul at Frontier. Nothing major at this time, but there were a few interesting pieces about our conversation that I would like to share. First, they will have some proposed amendments to the agreement, but I suspect they want to wait until we have decided one way or the other on whether to proceed in hiring them. Second, he indicated that he believes that as to the issue of track maintenance Co-Alliance wants an under-maintained track that is focused more on cheap movement of grain rather than efficiently moved grain. On the other hand, he believes that the HVRM focuses on speed and that the focus should not be on being able to move quickly, but safely. He also believes that the Town and HVRM are under-insured for the passenger operation. He felt that Powell has been under-charging Co-Alliance for some time, which has compounded the problem. Those are things that we really should discuss at some point.

----- Forwarded message -----

From: <mcfarland@aol.com>
Date: Wed, Jul 1, 2015 at 11:09 AM
Subject: Fwd: Docket No. AB-1232, Town of North Judson - Adverse Discontinuance of Service - in

1/11/2017

----- Original Message -----

From: Rachel Arndt
To: Mark Knebel ; Rachel Arndt ; Alicia Collins
Sent: Monday, March 07, 2016 3:08 PM
Subject: Re: RevShares Due

Mark:

I want to bounce an idea I had off of you. Tell me what you think. Our Mediation Agreement says there will be no passenger excursions until we have a new Lease Agreement in place. Obviously, you all are scheduling passenger excursions. The Easter Train I think we will have resolved here shortly, and I'm not worried about that. But, I am worried about upcoming passenger excursions, particularly if we are delayed much longer in waiting for a rental value for the line to publish the RFP. I know you are worried about that too.

What do you think about telling INDOT about our concerns at Thursdays meeting and asking them to write the Town a letter reminding the Town of the 2004 INDOT/Town Agreement that says that freight operations are not to take precedence over the passenger excursions? Co-Alliance and CKIN always want to argue that freight takes precedence under the STB, and I think that having INDOT specify their position may give us a trump card. I know the Town knows about the provision, but INDOT may be able to provide some authority. Any reason that this is a bad idea?

----- Original Message -----

From: Mark Knebel
To: Rachel Arndt ; Alicia Collins
Sent: Monday, March 07, 2016 3:58 PM
Subject: Re: FHWA-INDOT

My intent to notify FHWA was to explain in short detail what is happening and if FHWA would be interested in a "big brother role". My thought was FHWA seems to outrank STB, and thus a letter from FHWA in support of the Town and HVRM should play heavy, especially in the adverse discontinuance process. INDOT is being dispatched because they and the Town are signatories to the Transportation Funds agreement.

In short- Kathy at INDOT stated to me if HVRM trains aren't operating on the railroad, the Town will be forced to repay the \$1.5 million. She was emphatic about that. That is why I was being forceful about our schedule, and making sure the Town did not come afoul of the INDOT-Town agreement.

Mark

Mark

----- Original Message -----

From: Rachel Arndt

To: Mark Knebel

Sent: Monday, August 31, 2015 3:37 PM

Subject: Re: RFP draft vk2

A settlement for the capital contributions.

On Mon, Aug 31, 2015 at 3:26 PM, Mark Knebel <knebel99@centurylink.net> wrote:
A settlement to what? CKIN's contract expires, kick the snake to the mud puddle.

Bad news.

Mark

----- Original Message -----

From: Rachel Arndt

To: Mark Knebel ; Rachel Arndt

Sent: Monday, August 31, 2015 11:22 AM

Subject: Re: RFP draft vk2

Hi Mark:

The Board has agreed to attempt mediation with CKIN. Because of that, it was recommended to us by Tom to hold off on the RFP until we know what happens with mediation. There are a few reasons why. First, because the Town is still hesitant to choose a new operator when we do not know whether a settlement is possible. Second, Tom says that holding off on the RFP will not hurt our litigation and that it may help keep the issues more simple because we will not have a new operator ensnared in this.

I spoke to Wendy this morning about an unrelated issue and she indicated that she spoke with you about it. I think she spoke to Rich as well. I think it will be best to get a RFP draft ready to go and reviewed by the Board so that when it is time to publish, we won't have a delay. I have put my final corrections to the RFP on the back burner since we had some other Town issues come up. There is a chance I am going to have to make a rush trip to Tennessee this week due to a client emergency. If I do, I will not have time to work on it. If not, I should have some time this week to finalize.

On Thu, Aug 27, 2015 at 5:57 AM, Mark Knebel <knebel99@centurylink.net> wrote:
Rachel, are we near ready with the RFP now?

Mark

----- Original Message -----

From: Mark Knebel

To: Rachel A. Arndt

Sent: Wednesday, August 19, 2015 6:23 AM

Subject: RFP draft vk2

Rachel,

Worked on it again very early this morning and redid all the work lost yesterday afternoon - "

12/15/2016

Mark Knebel

From: "Mark Knebel," <knebel99@centurylink.net>
To: <news@kielmedia.com>
Sent: Tuesday, October 11, 2016 8:12 PM
Subject: HVRM update 10/11/16
Hello Justin,

I thought I would send you a few recent emails that sums up at this point where things are. CoA is acting like they own the rail line and CKIN is being its dishonest self, a reflection of its president Powell Felix.

HVRM's legal expense has now exceeded \$30,000 and because our 2016 schedule was derailed by the Town of North Judson's mediation agreement with CKIN and CoA, its been a heartbreak year. Ridership is down 48% over 2015. But the membership's resolve is solidly strong to see that snake Felix gone.

Mark Knebel
HVRM

----- Original Message -----

From: John K. Fiorilla
To: Rachel Arndt ; Thomas McFarland
Cc: Charles (Chuck) Lukmann (clukmann@hwillaw.com) ; Mark Knebel
Sent: Monday, October 10, 2016 7:26 PM
Subject: FW: Draft Joint Freight and Passenger Operating Protocols

Rachel and Tom- HVRM's position regarding co-alliance's comments are that HVRM now has protocols with Lake States which should be made part of the agreement between Lake States and North Judson. Co-Alliance should not have input into the operating protocols which Lake States and HVRM have already agreed to and provide for efficient, effective and safe freight operations as well as providing for the unhampered safe operations of HVRM over the line owned by North Judson. Quite frankly if the operating railroad can agree to protocols and HVRM has found a way to operate under the same protocols that should be the end of the matter. HVRM has safely operated its trains for several years now all with the help of trained and dedicated crew members and any suggestion that Co-Alliance should be telling HVRM or Lake States how to operate is not acceptable. HVRM's operations people have a lot railroad experience and look forward to operating in cooperation with Lake States. Co-Alliance should not be setting the provisions of those protocols which are should clearly be set by the operating entities. I would be glad to discuss this further with you at your convenience. *

John

From: John K. Fiorilla
Sent: Monday, October 10, 2016 7:15 PM
To: 'Charles A. Spitulnik' <cspitulnik@kaplankirsch.com>; clukmann@hwillaw.com
Cc: Charles (Chuck) Lukmann (clukmann@hwillaw.com) <clukmann@hwillaw.com>; Rachel Arndt <rachel@peterson-waggoner.com>; Thomas McFarland <tmcfarland@americitech.net>
Subject: RE: Hoosier Valley Railroad Museum

Mr. Spitulnik: AS you know our firm and Mr. Lukmann's firm represent HVRM regarding their operations over the railroad owned by the Town of North Judson, Indiana. Currently North Judson is negotiating with a proposed new operator on the line after the Town chose Lake States railroad to succeed CKIN as the operator. In the meantime

1/16/2017

Subject: draft Ops Agr 10.4

From: Hoosier Valley RR Museum (hvrn@yahoo.com)

To: pd@frontierrail.com;

Cc: da@frontierrail.com; rw@frontierrail.com;

Date: Monday, June 1, 2015 10:48 PM

Paul,

Per the approval of the Town Council, attached is draft ops agreement 10.4.

Some changes from previous:

- top of pg 6, two locos instead of one.
- middle of pg 11, 24-mos instead of 18.
- some adjustments to Sec. 14 pg 15.
- some adjustments to Sec. 15, pg 16
- addition of item 15-A & 15-B.
- addressed your common carrier concern in Sec 19.
- addition of item 14, pg 34.

Please reveiw carefully this draft ops agreement. At some point, a name of the railroad or initials will replace the initials (NOR) within the agreement.

Thank you,

Mark Knebel, Sec.
Hoosier Valley Railroad Museum Inc.
North Judson Railroad Advisory Committee
574-225-0255 c

Attachments

- RR Operator_TownAgreement draft 10.4.doc (119.00KB)



MICHAEL C. HARRIS
ROBERT A. WELSH
L. CHARLES LUKMANN, III
CHARLES E.G. PARKINSON
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April 19, 2016

VIA EMAIL rachel@peterson-waggoner.com

Rachel Arndt
Town Attorney for North Judson
125 East 10th Street
Rochester, IN 46975

Re: April 15, 2016 McFarland Letter

Dear Ms. Arndt:

I believe we had a very productive meeting with the North Judson Town Council, last Thursday, April 14, 2016. Everyone spoke their mind and the Town indicated its strong support for the Hoosier Valley Railroad Museum, as it well should. We also spoke about having an open process that we would assist you with in leasing the corridor or simply having another operator agreement. You indicated you were going to do a lease to an RFP process. Issues concerning CKIN and Co-Alliance were discussed. We left the meeting feeling positive and I specifically wished to propose language in whatever agreement you have with an operator that protects the HVRM much as the State of Indiana did in its contract with the Town in 2004. You suggested a trackage rights agreement and we are in the process of reviewing what you submitted.

The very next day after this meeting, you forwarded an email from Tom McFarland, the first part of which reads as follows:

Hi Rachel. Do you have anything in your file that identifies the segment of rail line that will not be leased to Co-Alliance ? It would have been identified at or near the time of the Mediation, which was December 9, I think. If that segment is identified, it would help me know the extent to which HVRM would operate over track leased to Co-Alliance and operated by CKIN.

You can understand how upset my client board members were upon seeing this letter as, if it is true, it indicates that none of what has been represented to us as been true.

Rachel Arndt
April 19, 2016
Page 2

You cannot possibly have an understanding that this line will be leased to Co-Alliance. That would violate the Indiana Open Door Act especially in light of the fact that you have not even sent your RFP out yet. This email states specifically that the track is going to be leased to Co-Alliance and operated by CKIN. All this does is compound the problems that have existed with entities that refuse to recognize the specific reason the Town of North Judson received \$1.5 million to purchase the corridor. I have also spoken to officials in LaPorte County who invested in this project for the very same reason that the State did.

We need to get a complete understanding on this to avoid this matter escalating more than it already has as a result of McFarland's email.

As far as the trackage rights go, suffice it to say that my client has rights over the entire railroad but operates the majority of its excursions on a smaller segment which Mark has already identified to you. I believe the language from the State of Indiana/INDOT Agreement in 2004 protecting the rights of HVRM need to be in the trackage rights agreement and also in any agreement the Town enters into with a lessee or an operator. Finally, no extension of the operator's rights from the December 2015 mediation agreement should happen that doesn't explicitly recognize HVRM's rights to operate on this railroad. Assuming we reach a trackage rights agreement, that should also be part of any agreement with a lessee or operator. To this end and also in assisting with your RFP, HVRM has retained an STB attorney by the name of John Fiorilla. John knows Tom McFarland fairly well and I would request that you contact Mr. McFarland to authorize him to discuss this matter with Mr. Fiorilla. I believe this will assist all parties in resolving this matter the way it should be resolved.

We will be meeting shortly and I'm sure there will be other issues raised but we want to get moving on this. Thank you for your cooperation.

Very truly yours,

HARRIS WELSH & LUKMANN



L. Charles Lukmann III
clukmann@hwllaw.com

LCL/pas



MICHAEL C. HARRIS
ROBERT A. WELSH
L. CHARLES LUKMANN, III
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May 4, 2016

VIA EMAIL TRANSMISSION

rachel@peterson-waggoner.com

Rachel Arndt
Town Attorney for North Judson
125 East 10th Street
Rochester, IN 46975

Re: Your email of May 2, 2016 (Hoosier Valley Railroad Museum)

Dear Rachel:

The email I received last night from you is the latest in a series of very disturbing developments. As you know, we were led to believe that the town was assisting the Museum when I traveled to North Judson a few weeks ago. This feeling did not last for more than a few days when we received the email from Tom McFarland that basically said the town had already decided what was going to happen with the railroad. In any event, the proposed agreement you sent me is not acceptable, nor are most of the concerns that apparently are leading the Council to take it seriously.

I should not have to keep repeating to everyone associated with the Town of North Judson that the only reason the town owns the railroad and the operator utilizes it, is because of the Hoosier Valley Railroad Museum. The INDOT Agreement makes this crystal clear and that is why the town received seven figures of taxpayer dollars to purchase the railroad. I also understand that other municipalities such as Porter County, Starke County, and LaPorte County contributed significant dollars for this purchase. I can tell you without a doubt that the town had best start looking out for the true party in interest, which is the HVRM, or everybody that contributed is going to know about this and I expect the town will be held accountable.

As far as the extension of the ill-advised Mediation Agreement goes, no extension is necessary. The operator cannot go anywhere unless the STB allows it to do so. Without the extension, the Museum's right remains unaffected.

Rachel Arndt
May 4, 2016
Page 2

The HVRM has retained an extremely knowledgeable and experienced STB attorney who will be writing you directly. His name is John Fiorilla. He will address a number of the items addressed in your letter, including the fear tactics that the operator is attempting to utilize, including stating that the INDOT Agreement will be superseded by FRA regulations. This is utter nonsense. The State of Indiana has sovereign immunity under the United States Constitution and the STB has absolutely no jurisdiction over the INDOT Agreement. I suspect Mr. Fiorilla will address this in his letter to you along with what the STB might do if the Operating Agreement expires. The Agreement has long ago expired. What needs to be incinerated is the Mediation Agreement, which expires on its own terms in a few days.

The town could easily have prepared specifications and gone out on an RFP for a new operator by now. Almost five months have gone by with nothing substantive happening except discussions of obtaining a lease that may not even comply with governing law, which is Indiana Code 36-1-11, et seq. It is incomprehensible why the town would attempt to follow a process that takes significant discretion away from it in determining who is on its railroad. That is precisely what a lease agreement would do as opposed to an RFP for an operator.

It is time to move away from the disingenuous operator who seems bent on destroying the only reason the town has the railroad, which is the Hoosier Valley Railroad Museum. It is also time for the town to stand up to this nonsense. Finally, it is time for the town to comply with the 2004 INDOT Agreement.

As previously stated, you will be hearing from John Fiorilla shortly. INDOT and all of the entities that contributed to the town will be hearing from myself.

Very truly yours,

HARRIS WELSH & LUKMANN



L. Charles Lukmann III
clukmann@hwllaw.com

LCL/sh
cc: Tom McFarland



MICHAEL C. HARRIS
ROBERT A. WELSH
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May 4, 2016

VIA EMAIL TRANSMISSION
kengland1@indot.in.gov

Katherine England
Director of Multimodal Planning & Programs
Indiana Department of Transportation
100 N. Senate Ave., IGCN 955
Indianapolis, IN 46204

Re: Hoosier Valley Railroad Museum issues with Town of North Judson

Dear Ms. England:

I would like to take this opportunity to introduce myself. My name is L. Charles Lukmann, III. I am an attorney in Chesterton and am one of the attorneys representing the Hoosier Valley Railroad Museum ("HVRM"). First off, I want to tell you how much the Museum appreciates your assistance concerning what appear to be violations by the Town of North Judson with its 2004 INDOT Agreement. You will recall that the sole reason the Town received taxpayer dollars from the State of Indiana and other municipalities was to preserve the very valuable entity known as the Hoosier Valley Railroad Museum. The Town is embarking on a path to destroy the railroad because of threats and fears perpetrated by the present operator. The Museum has also retained a knowledgeable and experienced STB attorney, John K. Fiorilla. I am sending you the following:

- Letter from Rachel Arndt to myself, Mark Knebel, and others on May 2, 2016;
- Response by Mark Knebel to letter which shows as a practical matter the proposed extension will significantly hurt, if not destroy, the HVRM;
- My letter to Rachel Arndt dated May 4, 2016;
- Letter from John Fiorilla to Rachel Arndt dated May 4, 2016.

On behalf of the Hoosier Valley Railroad Museum, we implore INDOT to take all steps necessary to force the Town of North Judson to live up to its 2004 Agreement with INDOT by not compromising the ability of HVRM to operate on the corridor which was purchased specifically for that purpose. You have been a big help in the past and we wouldn't be

Katherine England
Director of Multimodal Planning & Programs
Indiana Department of Transportation
May 4, 2016
Page 2

making this request of you if it was not of paramount importance. If the Town enters into the proposed extension agreement outlined in Ms. Arndt's May 2nd letter, it is likely to cause a series of adverse reactions. We are hoping with your immediate input that the Town will not enter into this ill-advised agreement.

Thank you for your cooperation in this matter.

Very truly yours,

HARRIS WELSH & LUKMANN



L. Charles Lukmann, III
clukmann@hwllaw.com

LCL/sh

Attachments

cc: Janice Osadczuk (via email Janice.Osadczuk@dot.gov)

Kathy Eaton-McKalip (via email kaeaton-mckalip@indot.in.gov)

----- Original Message ----- From: "Rachel Arndt" <rachel@peterson-waggoner.com>
To: "Chuck Lukmann" <clukmann@hwlaw.com>; "Thomas" <tmcfarland@ameritech.net>; "Rachel Arndt" <rachel@peterson-waggoner.com>; "Mark" <knebel99@centurylink.net>
Sent: Monday, May 02, 2016 7:06 PM
Subject: Fwd: Question

Chuck:

As you know, the Town is attempting to negotiate a temporary extension of the Operating Agreement and Mediation Agreement since the May 15, 2016 extension will be expiring soon. The Town has been offered the following terms;

1. The Operating Agreement will be extended for not more than 90 days;
2. CKIN will pay all revenue shares, using the Town's calculations, within 30 days;
3. That passenger excursions will resume, but will be temporarily modified to North Judson/English Lake only. Excursions to Lacrosse will be temporarily limited to only those excursions in which the parties can reach agreement. The number of passenger excursions from North Judson to English Lake will not be limited; and

4. CKIN will voluntarily relinquish its operating rights over the North Judson/English Lake portion of rail.

I am obligated to take all settlement offers to the Town. I have discussed the settlement with Tom McFarland, and anticipate recommending that the Town accept the settlement offer. The Town will likely not feel good about this Agreement. The Town will need to consider the risks/benefits of allowing the Operating Agreement to expire with the risks/benefits of agreeing to an extension. Since we do not know what rights and responsibilities that the STB will impose upon all parties if the Operating Agreement expires, I am hesitant to take the risk that the STB will prefer freight over passenger rail and shut the whole operation down despite the INDOT Agreement. It is our belief that the INDOT Agreement will be superseded by FRA regulations and agreeing to this temporary extension is the best way for the Town to protect the passenger excursions, albeit modified excursions, until we can get a Lease Agreement negotiated.