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BY E-Filing

Ms. Cynthia T. Brown
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C.
20423

**RE: STB Docket No. AB-55 (Sub-No. 643X), CSX Transportation, Inc.,
In La Porte, Porter and Starke Counties, IN
Petition to Reopen Offer of Financial Assistance Proceeding**

**FD 36076, Chesapeake And Indiana Railroad Company
Petition for Declaratory Relief**

Dear Ms. Brown:

On behalf of the Chesapeake and Indiana Railroad Company ("CKIN"), I am e-filing CKIN's Response to the Town of North Judson's "Reply in Opposition to Petition For Leave To File A Reply To Reply" that CKIN had submitted on January 13 2017.

Also in preparing this filing, I noticed that CKIN's Petition For Leave contains a typographical error on page 11, footnote 8. The June 30, 2015, Co-Alliance letter to the Board is attached as Exhibit 1 not Exhibit 2. CKIN apologizes for this error.

Sincerely yours,


John D. Heffner

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Ms. Cynthia T. Brown

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Enclosures

cc: All parties

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**

**RESPONSE TO TOWN OF NORTH JUDSON'S
REPLY IN OPPOSITION**

Submitted by

John D. Heffner
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Dated: January 25, 2017

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-55 (Sub-No. 643X)

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

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**RESPONSE TO TOWN OF NORTH JUDSON'S
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**I.
INTRODUCTION**

On January 18, 2017, the Town of North Judson ("the Town") filed a document with the Board entitled its "Reply in Opposition to Petition For Leave To File A Reply To Reply" in response to Chesapeake and Indiana Railroad's ("CKIN's") Petition to File a Reply to a Reply. Pursuant to 49 CFR §1117, CKIN respectfully requests permission to respond in the interest of a complete record.

II. ARGUMENT

The Town's "Reply in Opposition" is really in the nature of a motion to strike to which CKIN would normally be entitled under the Board's Rules of Practice. 49 CFR §1104.13(a). Moreover, the filing of CKIN's Petition was consistent with longstanding Board policy of allowing such replies where necessary for a complete record. CKIN did so to correct false or inaccurate information submitted by other parties in this proceeding as well as to respond to certain allegations raised for the first time by its opponents. CKIN anticipates making additional filings should discovery in its Indiana civil litigation reveal information relevant to this Board proceeding.

The overarching issue in the Board proceeding is one of public convenience and necessity. First, as the Town rightfully observed months ago in a filing related to the Town's proposed but never filed adverse discontinuance application, "[s]uch an application is to be granted unless it is shown that shippers on the line are likely to be seriously harmed as a result of the rail service provided by the replacement operator."¹ While the principal shipper on the line, Co-Alliance, Inc., has refrained from becoming a party in this proceeding, it has stated that it is satisfied with the rail service that CKIN is providing and it is concerned about the uncertainty

¹ Reply in Opposition to Motion to Compel Responses to Request for Admissions, at page 3.

created by the Town's desire to replace CKIN with another operator.² Second, CKIN went to great lengths to express its concern that the actions of the Town and the Hoosier Valley Railroad Museum ("HVRM") in promoting excursion passenger service over common carrier freight service have compromised CKIN's ability to serve its customers' needs. These actions have consisted of HVRM operating excursion trains in violation of a settlement agreement reached with the Town as well as proposing operations at times and with minimum notice to CKIN that impeded CKIN's ability to operate freight trains. While these actions are discussed at great length in CKIN President Powell Felix's verified rebuttal testimony, they have also been of great concern to Co-Alliance.³ CKIN submitted as part of its Petition for Leave a comparison between the proposed Operating Protocols Agreement between the Chicago & North Judson Railway ("CNJR") and HVRM on the one hand and the 2004 Operating Agreement and the draft 2015 Railroad Operating Agreement on the other hand. The provisions of the former document provide far more protection to common carrier freight service than what CKIN has experienced under the operating regimes dictated by HVRM and allowed by the Town. Finally, HVRM would have the Board believe that its operations have been a model of railroad safety while CKIN's stewardship of the

² See, Co-Alliance letter dated June 30, 2015, and November 20, 2015, filed as Exhibits 2 and 8 to CKIN's Petition dated January 17, 2017, and filed January 13, 2017.

³ See, footnote 2, *supra*.

subject rail line has been deplorable. An opinion rendered by James Helenhouse, Esq., of the law firm of Fletcher & Sippel which represented CKIN in accident litigation several years ago and is the very same law firm representing CNJR in this matter today, tells a totally different story. It is HVRM that has compromised safety and it is the same HVRM that has had inadequate insurance coverage so far.

III. CONCLUSION

Barring further relevant evidence obtained on discovery in the Indiana civil proceeding and possible filings by other parties, there is little more to be said. CKIN respectfully urges the Board to examine carefully the allegations it has made and to undertake its own investigation as to whether actions by the Town and HVRM have undermined CKIN's ability to provide common carrier railroad service in violation of the ICC Termination Act's rail transportation policy goals.

Submitted by



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Dated: January 25, 2017

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that a copy of the foregoing Chesapeake And Indiana Railroad Company's Response to Town of North Judson's "Reply In Opposition" was sent by electronic mail to all parties of record in this proceeding.

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John D. Heffner

Dated: January 25, 2017