

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Village of Elwood, Will County, Illinois,	)	
Petitioner	)	
	)	
v.	)	No. T01-0064
	)	
Union Pacific Railroad Company and State of	)	
Illinois, Department of Transportation,	)	
Respondents	)	
	)	
Petition for an Order of the Illinois Commerce	)	
Commission authorizing the establishment of a	)	
new grade crossing at East Access Road with the	)	
track of Union Pacific Railroad Company, in the	)	
Village of Elwood, Will County, Illinois, directing	)	
thereon the installation of automatic protection	)	
devices and construction of the crossing proper	)	
and dividing the cost among the parties, and	)	
directing the closure of the existing grade crossing	)	
at Chicago Avenue with the track of Union Pacific	)	
Railroad in the Village of Elwood, Will County,	)	
Illinois.	)	

**CENTERPOINT INTERMODAL LLC’S RESPONSE IN OPPOSITION  
TO THE VILLAGE OF ELWOOD’S MOTION FOR SANCTIONS**

COMES NOW, Intervenor CenterPoint Intermodal LLC (“CenterPoint”), through its undersigned counsel, pursuant to Title 83, Sections 200.420, 200.500, and 200.640 of the Illinois Administrative Code, respectfully requests that this Court deny the Village of Elwood’s Motion for Sanctions and for Other Relief (“Motion for Sanctions”).<sup>1</sup> The Village of Elwood’s Motion for Sanctions contains multiple abject falsehoods regarding CenterPoint’s production of documents (which totaled more nearly 600 total pages and many documents), interrogatories, and list of exhibits. This Motion for Sanctions also violates this Court’s prior order dictating that all motions complaining about outstanding discovery issues must be filed by October 15, 2014,

---

<sup>1</sup> Pursuant to Title 83, Sections 200.420 of the Illinois Administrative Code, the Village of Elwood’s Motion for Sanctions should have been titled a “motion to strike.”

nearly two weeks ago. In support of this Motion, CenterPoint further states as follows:

**A. Legal Standard**

1. Pursuant to Title 83, Section 200.660 of the Illinois Administrative Code, “The Hearing Examiner may direct parties and staff witnesses to serve testimony and exhibits and may establish a date certain for service.”

2. Pursuant to Title 83, Section 200.640 of the Illinois Administrative Code, the Court may take administrative notice of, among other items, “State and Federal statutes and municipal and local ordinances,” “the decisions of State and Federal courts,” and “all other matters of which the circuit courts of this State may take judicial notice.”

**B. Elwood’s False Assertions Regarding CenterPoint’s Substantial Document Production.**

3. The Village of Elwood’s assertions regarding CenterPoint’s production of documents are objectively false. The Village of Elwood falsely claims that CenterPoint “disclosed only a single document.” (Mot. for Sanctions at ¶ 5.) In fact, CenterPoint’s initial production of documents consisted of various responsive documents, Bates labeled CP0000001 – CP0000466. (See Exhibit A, Cover Email to CenterPoint’s Production of Documents.)

4. There is no doubt the Village of Elwood’s attorneys received CenterPoint’s initial production of documents. CenterPoint served these documents using a process called “ShareFile,” which permits opposing parties to create an account and access documents. On Friday, October 17, 2014, CenterPoint’s attorneys received *three* separate notifications indicating that David Schmidt, attorney for the Village of Elwood, accessed and downloaded this production of documents. (See Group Exhibit B, “David Schmidt has downloaded a file from the folder “File Box””.)

5. The Village of Elwood also incorrectly asserts that CenterPoint “never produced

any other documents.” (Mot. for Sanctions at ¶ 5.) This assertion, too, is demonstrably false. On Tuesday, October 21, 2014, CenterPoint issued a supplemental production of documents, and served this production on all parties.<sup>2</sup> These documents were Bates labeled CP0000467 – CP0000572, and consisted of dozens of additional documents. (See Exhibit C, Cover Email to CenterPoint’s Supplemental Production of Documents.)

6. The Village of Elwood also received this supplemental production of documents. CenterPoint’s attorney sent this supplemental production via email. (See *id.*) CenterPoint received no bounce-back message or any other automatic notification of rejection from David Schmidt or Paul Streicher, the attorneys representing the Village of Elwood in this matter.

**C. Elwood’s False Assertions Regarding CenterPoint’s Answers to Interrogatories.**

7. The Village of Elwood also inaccurately describes CenterPoint’s Answers to Interrogatories. For example, the Village of Elwood claims CenterPoint did not list David Schultz of Prairie Creek Logistics as a proposed witness in its Answers to Interrogatories. This claim is manifestly false. A quick review of CenterPoint’s Answers to Interrogatories, attached to the Village of Elwood’s Motion for Sanctions as Exhibit A, reveals that CenterPoint listed this witness.<sup>3</sup> (See Motion for Sanctions, Exhibit A.)

8. Importantly, the Union Pacific Railroad Company (“UP”) also named as witnesses individuals not listed in its answers to interrogatories. For example, John Potocki is not listed in the UP’s answers to interrogatories, but is included on the UP’s witness list. The Village of Elwood did not file a motion for sanctions seeking to bar the testimony of such individuals.

---

<sup>2</sup> Nearly every party in this litigation – including the Village of Elwood itself – has served a supplemental production of documents or otherwise amended its pre-hearing filings in some manner. The Village of Elwood, however, has moved for “sanctions” only against CenterPoint.

<sup>3</sup> CenterPoint does not intend to call a representative of Walmart as a witness at the upcoming evidentiary hearing in this matter.

9. Moreover, in its Motion for Sanctions, the Village of Elwood asserts that CenterPoint “*essentially*” adopts the ICC Staff’s and Union Pacific’s opinions and answers to interrogatories, which “primarily seek the closing of the at grade crossing at Strawn Road.”

10. The Village of Elwood’s argument is an unjustifiable stretch. While in recent weeks the ICC Staff and Union Pacific have come out in favor of closing the grade crossing at Walter Strawn Drive, in fact the answers to interrogatories served by both parties include a plethora of suggestions for responding to safety concerns associated with the crossing. Needless to say, many of these suggestions do *not* contemplate a full closure of the crossing.

**D. Elwood’s False Assertions Regarding CenterPoint’s Proposed Exhibits.**

11. The Village of Elwood also falsely asserts that it sought, and CenterPoint objected to, “many” of CenterPoint’s proposed exhibits. Once again, this assertion simply is inaccurate.

12. The vast majority of CenterPoint’s proposed exhibits were produced by CenterPoint or other parties in this litigation. The Village of Elwood appears to largely complain about CenterPoint’s proposed exhibits 70 through 78. These documents relate to the recent federal litigation involving many of the same parties and legal issues as in this litigation.

13. These exhibits are relevant to the evidentiary hearing scheduled for October 29, 2014. In addition to addressing the critical nature of the crossing at Walter Strawn Drive to CenterPoint and its many tenants at the CenterPoint Intermodal Center, these documents also address the many safety concerns and infrastructure problems that will be *caused* by a closure of the rail grade crossing at Walter Strawn Drive and Illinois Route 53.

14. Pursuant to Title 83, Section 200.640 of the Illinois Administrative Code, the Court may and should take judicial notice of these documents.

**E. Conclusion.**

15. This Court has specifically noted in open court that this is not a standard judicial

proceeding, and that discovery will be tailored to the needs of the parties. The Court noted this several times when attorneys for the Village of Elwood delayed answering CenterPoint's discovery requests for many months. Indeed, the purpose of discovery and the parties' proposed exhibits is to put all parties on notice of the possible issues at play in this litigation. CenterPoint has satisfied this standard by providing substantial discovery responses and pre-hearing materials to all parties with sufficient notice before the hearing.

16. Finally, the tenor and timing of Village of Elwood's Motion for Sanctions smacks of unfairness and appears designed to prejudice CenterPoint immediately prior to the hearing. Indeed, this Motion for Sanctions is filed nearly *two weeks* after the Court's October 15, 2014 deadline for filing motions complaining about outstanding discovery issues. Moreover, the Motion for Sanctions contrasts with the parties' prior efforts to reach an ameliorative solution that will satisfy all parties to this litigation.

WHEREFORE, Intervenor CenterPoint Intermodal LLC respectfully requests that this Court enter an order: (1) denying the Village of Elwood's Motion to Strike; and (2) granting for all other relief the Court deems equitable and just.

Respectfully submitted,

CENTERPOINT INTERMODAL, LLC

By: /s/ Michael J. Scotti, III  
One of Its Attorneys

Michael J. Scotti, III  
Eric B. Powers  
FREEBORN & PETERS LLP  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606  
Phone: (312) 360-6000  
Fax: (312) 360-6520  
[mjscotti@freeborn.com](mailto:mjscotti@freeborn.com)  
[epowers@freeborn.com](mailto:epowers@freeborn.com)

Dated: October 28, 2014

# EXHIBIT A

**Powers, Eric B.**

---

**From:** Powers, Eric B.  
**Sent:** Thursday, October 16, 2014 9:06 PM  
**To:** 'ceanders@up.com'; 'janderso@icc.illinois.gov'; 'kbreslin@RB-LLP.com';  
'michael.forti@illinois.gov'; 'hjfreise@up.com'; 'bgould@willcountyillinois.com';  
'jennifer.kuntz@illinois.gov'; 'jason.johnson@illinois.gov';  
'lawrence.parrish@illinois.gov'; 'dpowers@icc.illinois.gov'; 'dschmidt@maccabemcguire.com'; 'mackshumate@up.com'; 'pstreicher@rockfuscoconnelly.com';  
'bvercruy@icc.illinois.gov'  
**Cc:** Scotti, III, Michael J.; Kallish, Marc H.; Ortiz, Mark A.; Liss, Mary; Gruca, Janis L.  
**Subject:** Village of Elwood v. Union Pacific Railroad, Case No. T01-0064  
**Attachments:** 3221658\_1 - 2014.10.16 CenterPoint Intermodal LLC\_s Responses to The Village of Ellwood\_s Request for Production.PDF; 3221660\_1 - 2014.10.16 Notice of Filing - CenterPoint\_s Responses to Request for Production by Village of Elwood.PDF

All,

Attached are CenterPoint's Responses to the Village of Elwood's Requests for Production and notice of filing.

You may access CenterPoint's production by [clicking here](#).

Please contact Michael Scotti with any questions.

Regards,  
Eric Powers

**ERIC B POWERS**  
**Freeborn & Peters LLP**  
311 South Wacker Drive, Suite 3000  
Chicago, IL 60606  
(312) 360-6486 direct  
[epowers@freeborn.com](mailto:epowers@freeborn.com)

# EXHIBIT B

**Powers, Eric B.**

---

**From:** ShareFile Notifications <noreply@sf-notifications.com>  
**Sent:** Friday, October 17, 2014 10:06 AM  
**To:** Stadel, Eric H.  
**Subject:** David Schmidt has downloaded a file from the folder 'File Box'



Eric,

David Schmidt downloaded a file from a "Send Files" link at 10/17/14 10:06A:

**File Box**

**Name:** CP00000001-466.pdf

**Size:** 31.30 MB • **Downloaded:** 10/17/14 10:06a

**User:** David Schmidt [dschmidt@maccabe-mcguire.com] (MacCabe & McGuire)

Dates are displayed in UTC -6

[Click here to change how often ShareFile sends emails](#)

Powered By Citrix ShareFile 2014

**Powers, Eric B.**

---

**From:** ShareFile Notifications <noreply@sf-notifications.com>  
**Sent:** Friday, October 17, 2014 10:06 AM  
**To:** Stadel, Eric H.  
**Subject:** David Schmidt has downloaded a file from the folder 'File Box'



Eric,

David Schmidt downloaded a file from a "Send Files" link at 10/17/14 10:06A:

**File Box**

**Name:** CP00000001-466.pdf

**Size:** 31.30 MB • **Downloaded:** 10/17/14 10:06a

**User:** David Schmidt [dschmidt@maccabe-mcguire.com] (MacCabe & McGuire)

Dates are displayed in UTC -6

[Click here to change how often ShareFile sends emails](#)

Powered By Citrix ShareFile 2014

**Powers, Eric B.**

---

**From:** ShareFile Notifications <noreply@sf-notifications.com>  
**Sent:** Friday, October 17, 2014 10:09 AM  
**To:** Stadel, Eric H.  
**Subject:** David Schmidt has downloaded a file from the folder 'File Box'



Eric,

David Schmidt downloaded a file from a "Send Files" link at 10/17/14 10:09A:

**File Box**

**Name:** CP00000001-466.pdf

**Size:** 31.30 MB • **Downloaded:** 10/17/14 10:09a

**User:** David Schmidt [dschmidt@maccabe-mcguire.com] (MacCabe & McGuire )

Dates are displayed in UTC -6

[Click here to change how often ShareFile sends emails](#)

Powered By Citrix ShareFile 2014

# EXHIBIT C

## **Powers, Eric B.**

---

**From:** Powers, Eric B.  
**Sent:** Tuesday, October 21, 2014 6:03 PM  
**To:** 'ceanders@up.com'; 'janderso@icc.illinois.gov'; 'kbreslin@RB-LLP.com'; 'michael.forti@illinois.gov'; 'hjfreise@up.com'; 'bgould@willcountyillinois.com'; 'jennifer.kuntz@illinois.gov'; 'jason.johnson@illinois.gov'; 'lawrence.parrish@illinois.gov'; 'dpowers@icc.illinois.gov'; 'dschmidt@maccabemcguire.com'; 'mackshumate@up.com'; 'pstreicher@rockfuscoconnelly.com'; 'bvercruy@icc.illinois.gov'  
**Cc:** Scotti, III, Michael J.; Kallish, Marc H.; Ortiz, Mark A.; Liss, Mary; Gruca, Janis L.  
**Subject:** Village of Elwood v. Union Pacific Railroad, Case No. T01-0064  
**Attachments:** 2014.10.21 CenterPoint supplemental production of documents.pdf; 2014.10.21 Notice of Filing - CenterPoint's Supplemental Production of Documents.pdf

All,

Attached is CenterPoint's supplemental production of documents and accompanying notice of filing, the latter of which was filed with the ICC this afternoon. The production consists of Bates stamped documents CP0000467 – CP0000572. Please contact Michael Scotti or me with any questions.

Regards,  
Eric Powers

### **ERIC B POWERS**

#### **Freeborn & Peters LLP**

311 South Wacker Drive, Suite 3000

Chicago, IL 60606

(312) 360-6486 direct

[epowers@freeborn.com](mailto:epowers@freeborn.com)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **CenterPoint Intermodal LLC's Response in Opposition to the Village of Elwood's Motion for Sanctions and for Other Relief** was served upon all counsel of record listed on the attached Service List via email this 28th day of October, 2014.

/s/ Michael J. Scotti, III \_\_\_\_\_

Dated: October 28, 2014

**SERVICE LIST**  
**T01-0064**

Claire E. Anderson, Engineer  
Commuter Operations  
Union Pacific Railroad  
2 North Riverside, Suite 1700  
Chicago, IL 60606  
[ceanders@up.com](mailto:ceanders@up.com)

Jennifer Anderson  
Office of Transportation Counsel  
Illinois Commerce Commission  
160 N. LaSalle Street, Suite C-800  
Chicago, IL 60601  
[janderso@icc.illinois.gov](mailto:janderso@icc.illinois.gov)

Kevin P. Breslin  
Richmond Breslin LLP  
5215 Old Orchard Road, Suite 420  
Skokie, IL 60077  
[kbreslin@RB-LLP.com](mailto:kbreslin@RB-LLP.com)

Michael Forti, Chief Counsel  
Illinois Department of Transportation  
2300 South Dirksen Parkway  
Springfield, IL 62764  
[michael.forti@illinois.gov](mailto:michael.forti@illinois.gov)

John Freise, Industry & Public Projects  
Union Pacific Railroad Company  
100 North Broadway, Suite 1500  
St. Louis, MO 63102  
[hjfreise@up.com](mailto:hjfreise@up.com)

Bruce D. Gould  
Will County Highway Engineer  
16841 West Laraway Road  
Joliet, IL 60433  
[bgould@willcountyillinois.com](mailto:bgould@willcountyillinois.com)

Jennifer R. Kuntz  
Office of Chief Counsel  
Illinois Department of Transportation  
2300 South Dirksen Parkway, Room 313  
Springfield, IL 62764  
[jennifer.kuntz@illinois.gov](mailto:jennifer.kuntz@illinois.gov)

Omer Osman  
Director of Highways – IDOT  
ATTN: Jason Johnson  
2300 South Dirksen Parkway  
Springfield, IL 62764  
[jason.johnson@illinois.gov](mailto:jason.johnson@illinois.gov)

Lawrence D. Parrish  
Assistant Chief Counsel  
Illinois Department of Transportation  
100 W. Randolph, Suite 6-600  
Chicago, IL 60601  
[lawrence.parrish@illinois.gov](mailto:lawrence.parrish@illinois.gov)

Daniel Powers  
Transportation – Railroad  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
[dpowers@icc.illinois.gov](mailto:dpowers@icc.illinois.gov)

David R. Schmidt  
MacCabe & McGuire  
77 West Wacker Drive, Suite 3333  
Chicago, IL 60601  
[dschmidt@maccabe-mcguire.com](mailto:dschmidt@maccabe-mcguire.com)

Mack H. Shumate Jr.  
Attorney for Union Pacific Railroad Company  
101 N. Wacker Drive, Suite 1920  
Chicago, IL 60606  
[mackshumate@up.com](mailto:mackshumate@up.com)

Paul D. Streicher  
Attorney for the Village of Elwood  
Rock Fusco & Connelly LLC  
321 North Clark Street, Suite 2200  
Chicago, IL 60654  
[pstreicher@rockfuscoconnelly.com](mailto:pstreicher@rockfuscoconnelly.com)

Brian A. Vercruysse, Rail Safety Specialist  
Railroad Section  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701  
[bvercruy@icc.illinois.gov](mailto:bvercruy@icc.illinois.gov)