

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

300361

February 10, 2020

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
February 10, 2020
Part of
Public Record

Re: STB Docket No. AB-1297X
Indiana & Ohio Railway Company
-Discontinuance of Service Exemption-

Dear Ms. Brown:

Enclosed for e-filing on behalf of the Indiana & Ohio Railway Company is a Notice of Exempt Discontinuance being filed under 49 CFR part 1152 subpart F. The filing fee of \$4,400 was paid using Pay.gov.

Please let me know if there are any questions regarding this filing.

Sincerely,



Justin J. Marks
Counsel for Indiana & Ohio Railway Company

Enclosures

FEE RECEIVED
February 10, 2020
SURFACE
TRANSPORTATION BOARD

FILED
February 10, 2020
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1297X

INDIANA & OHIO RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN WARREN COUNTY, OH

NOTICE OF EXEMPT DISCONTINUANCE

(color images included)

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Indiana & Ohio Railway Company

Dated: February 10, 2020

Before the

SURFACE TRANSPORTATION BOARD

STB Docket No. AB-1297X

**INDIANA & OHIO RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN WARREN COUNTY, OH**

NOTICE OF EXEMPT DISCONTINUANCE

Indiana & Ohio Railway Company (“IORY”) hereby invokes the Board’s class exemption procedures at 49 C.F.R. part 1152 subpart F seeking exemption authority to discontinue its freight operating rights over a 5.6-mile rail line extending between milepost 1.10 near Lebanon and milepost 6.70 at Hageman Junction near Mason in Warren County, Ohio (the “Subject Line”).

The City of Lebanon, Ohio owns the Subject Line, and IORY is the freight operator pursuant to a contract with the City of Lebanon.¹ The City of Lebanon leases the Subject Line to an excursion operator. IORY last provided freight service over the Subject Line in approximately 2013 or earlier. The Subject Line is stub-ended so no overhead service is possible or needs to be transported over other routes.

This Notice of Exempt Discontinuance is being filed pursuant to the requirements of 49 C.F.R. part 1152 subpart F. In accordance with such requirements, Applicant hereby states as follows:

1. The exact name of Applicant is Indiana & Ohio Railway Company.

¹ *Indiana & Ohio Railway Company – Acquisition and Operation Exemption – Indiana & Ohio Railroad Company*, STB Finance Docket 30960 (served Feb. 6, 1987).

2. Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

3. IORY is invoking the Board's class exemption procedures in order to discontinue service over the Subject Line that has not been used for freight service since 2013 or earlier. The Subject Line extends between milepost 1.10 near Lebanon and milepost 6.70 at Hageman Junction near Mason in Warren County, Ohio. The Subject Line passes through Warren County.

4. A detailed map of the Subject Line is attached hereto as Exhibit A. A map of the IORY system is also attached as part of Exhibit A.

5. The representative of IORY to whom correspondence should be sent is:

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave., NW
Suite 1300 South
Washington, DC 20004
Tel: (202) 772-0916

6. The Subject Line to be discontinued traverses through United States ZIP Codes 45036 and 45040.

7. The notice of exemption presented herein pertains to IORY's proposal to discontinue common carrier freight operations over the Subject Line and not abandonment authority. Accordingly, trail use / rail banking and other public use conditions are not appropriate.²

8. Applicant proposes to consummate the discontinuance on or after March 31,

² See *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008); *Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA*, STB Docket No. AB-721X (served November 16, 2007); *Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS*, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).

2020.

9. IORY certifies that:

(a) It has not handled local traffic over the Subject Line in at least two years.

In addition, because the Subject Line is stub-ended, it has not handled any overhead traffic over the Subject Line, and there is no potential overhead traffic that would need to be transported via other rail routes.

(b) No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding IORY's cessation of service over the Subject Line, either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period.

10. Although no employees of IORY will be affected by the proposed discontinuance, IORY recognizes that the discontinuance of service will be made subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad Co. -- Abandonment - - Goshen*, 360 I.C.C. 91 (1979).

11. Because IORY seeks only discontinuance and not abandonment authority (and because the Subject Line is owned by the City of Lebanon and not by IORY), IORY will not be disposing of or altering the Subject Line or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding.³

12. IORY certifies that it has complied with the legal (newspaper) notice requirements of 49 C.F.R. §1105.12. Notice of the proposed discontinuance was published on February 4, 2020 in the *Journal-News Pulse of Lebanon and Mason*. A copy of the proof of publication is attached as Exhibit B.

³ See *supra* note 2 and 49 C.F.R. §1105.6(c) and §1105.8(b).

13. IORY has complied with the advance notice requirements of 49 C.F.R. §1152.50(d)(1). A copy of the notice dated February 4, 2020, sent to the required governmental agencies is attached hereto as Exhibit C.

For the reasons set forth above, the Board should determine that the proposed discontinuance of service qualifies for the use of the Board's class exemption procedures at 49 C.F.R. part 1152 subpart F, and it should issue the appropriate notice.

Respectfully submitted,



Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Indiana & Ohio Railway Company

Dated: February 10, 2020

VERIFICATION

I hereby verify on behalf of Indiana & Ohio Railway Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

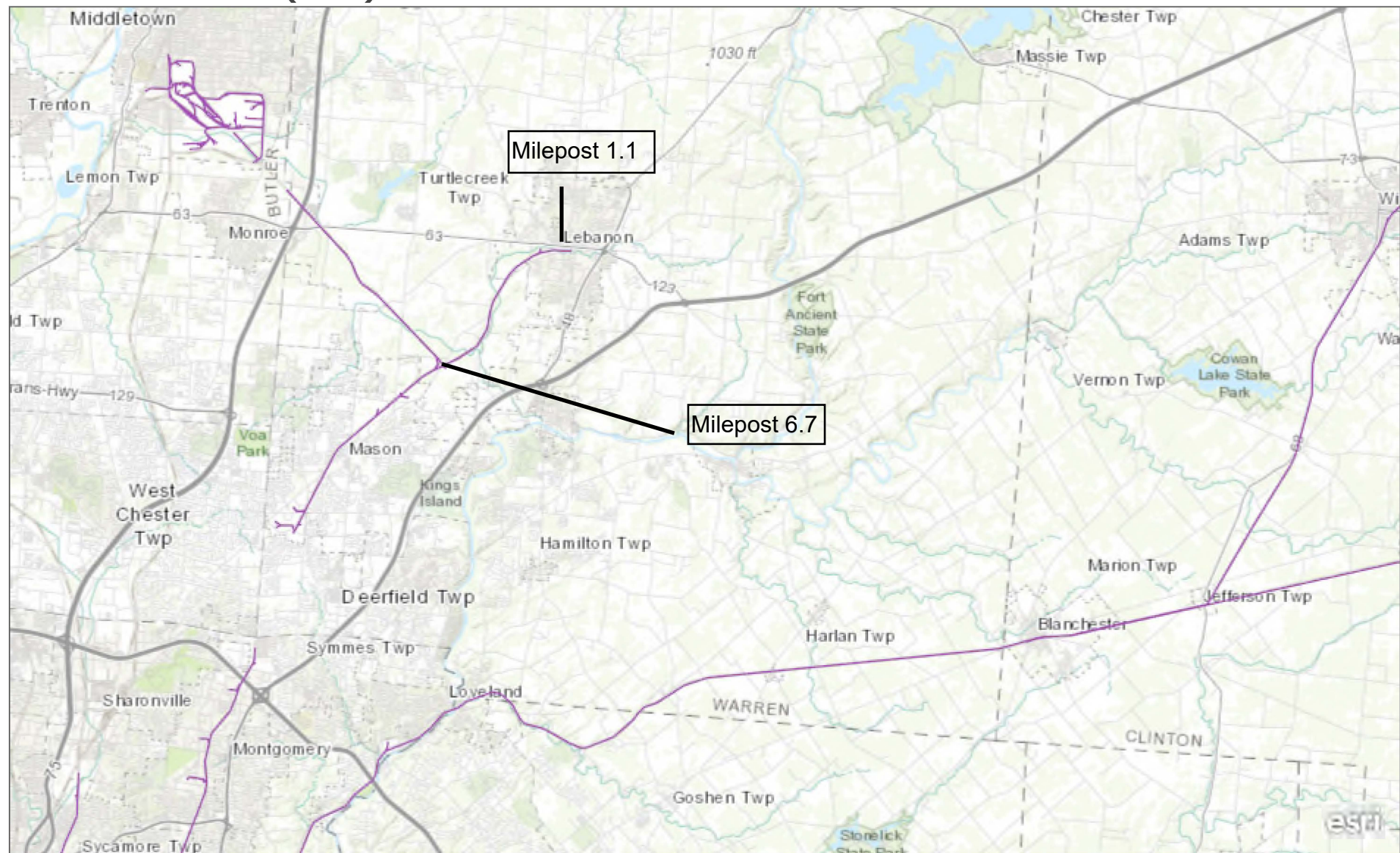
Executed on 2-05-2020.

A handwritten signature in blue ink, appearing to read "Martin Pohlod", written over a horizontal line.

Martin Pohlod, President

EXHIBIT A - MAP

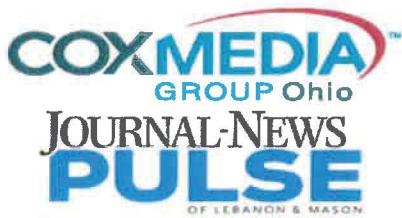
Short Line Railroads (2018)



Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS

Source: STB Railroad Map Depot

EXHIBIT B – NEWSPAPER NOTICE



PROOF OF PUBLICATION STATE OF OHIO

PUBLIC NOTICE

Before the undersigned authority personally appeared Andrea Feltner, who on oath says that he/she is a Legal Advertising Representative of the Journal-News Pulse of Lebanon and Mason, a weekly newspaper of general circulation in Warren County, and State of Ohio, and he/she further says that the Legal Advertisement, a copy of which is hereunto attached, has been published in the said Journal-News Pulse of Lebanon and Mason, 57 Lines, 1 Time(s), last day of publication being 02/02/2020, and he/she further says that the bona fide weekly paid circulation of the said Journal-News Pulse of Lebanon and Mason was over 22,000 at the time the said advertisement was published, and that the price charged for same does not exceed the rates charged on annual contract for the like amount of space to other advertisers in the general display advertising columns.

CLARK HILL PLC
1001 PENNSYLVANIA AVE NW
WASHINGTON, DC 20004

Invoice/Order Number:	0000601718
Ad Cost:	\$148.20
Paid:	\$148.20
Balance Due:	\$0.00

Signed


(Legal Advertising Agent)

Sworn or affirmed to, and subscribed before me, this 3rd day of February, 2020 in Testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

Signed


(Notary)
VICKY LEE PLANNERY
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
03-16-2022

Please see Ad on following page(s).

Invoice/Order Number:	0000601718
Ad Cost:	\$148.20
Paid:	\$148.20
Balance Due:	\$0.00

**NOTICE OF INTENT TO DISCONTINUE
RAIL SERVICE**

Indiana & Ohio Railway Company (IORY) issues this notice that on or about February 10, 2020, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F – Exempt Abandonments and Discontinuances of Service and Trackage Rights permitting IORY to discontinue service over approximately 5.6 miles of the line of railroad between milepost 1.10 near Lebanon and milepost 6.70 at Hageman Junction near Mason in Warren County, Ohio (the Line). The Line traverses through United States ZIP Codes 45036 and 45040. The IORY proceeding will be docketed as STB Docket No. AB- 1297X.

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8. Appropriate offers of financial assistance to subsidize rail service can be filed with the STB. Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on IORY's representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; 202-772-0916.
2-2/2020

0000601718-01

**EXHIBIT C – 10 DAY NOTICES
(Excluding Enclosures)**

CLARK HILL

Justin J. Marks
T 202.772.0916
F 202.772.0930
Email: jmarks@ClarkHill.com

Clark Hill
1001 Pennsylvania Avenue NW
Suite 1300
Washington, DC 20004
T 202.772.0909
F 202.772.0919

clarkhill.com

January 22, 2020

To: All Persons on the Attached Service List

Re: STB Docket No. AB 1297X)
Indiana & Ohio Railway Company
-Discontinuance of Service Exemption-
In Warren County, OH

Dear Sir or Madam:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. §1152.50(d), to advise you that Indiana & Ohio Railway Company ("IORY") plans to seek authorization from the Surface Transportation Board ("STB") to discontinue service over the line of railroad described below, by filing a verified notice of exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F. IORY expects to file the notice of exemption with the STB on or about February 10, 2020, under STB Docket No. AB 1297X.

IORY leases the line described below from the City of Lebanon, Ohio which owns the line. The lease is being terminated, and IORY will invoke the STB's exemption procedures to discontinue service of the line of railroad between milepost 1.10 near Lebanon and milepost 6.70 at Hageman Junction near Mason in Warren County, Ohio (the "Line"). The Line traverses through United States Zip Codes 45036 and 45040. A map of the Line is enclosed with this letter.

Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Line, IORY understands that the question of whether the Line contains federally granted rights-of-way is inapplicable, and that the Line would not be suited at this time for alternative public use. Although it is not the owner of the Line, any pertinent documentation in the railroads' possession will be made available promptly to those requesting it.

IORY has no current plans to salvage the track along the Line as a result of discontinuance.

Sincerely,



Justin J. Marks
Counsel to Indiana & Ohio Railway Company

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Notice of Exempt Discontinuance was served on the persons shown on the attached list by first class mail, postage prepaid.



Justin J. Marks

Dated: February 10, 2020

**Service List for
STB Docket No. AB-1297X**

Ohio Public Utilities Commission
180 East Broad Street
Columbus, Ohio 43215

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National
Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

Ohio Rail Development Commission
1980 West Broad Street
Mail Stop #3140
Columbus, Ohio, 43223

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240