

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36401]

Indiana & Ohio Railway Company—Operation Exemption—Fulton Railroad Co. Ltd.

Indiana & Ohio Railway Company (IORY), a Class III railroad, has filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to continue to operate a Fulton Railroad Co. Ltd. (Fulton Railroad) rail line, from its connection at IORY milepost 0.0 and continuing to the end of Fulton Railroad's tracks in the City of Cincinnati, Millcreek Township, Hamilton County, Ohio, a total distance of approximately 4,800 feet (the Line). IORY states that it has entered into an amended and restated operating rights agreement (Amended Agreement) with Fulton Railroad to amend the existing operating agreement (Current Agreement).¹

IORY states that it is the present operator of the Line under the Current Agreement. IORY states that the Amended Agreement extends the term and revises other commercial provisions which will allow IORY to continue operating the Line until either party decides to terminate.

¹ See Ind. & Ohio Ry.—Trackage Rights Exemption—Fulton Ry., FD 34800 (STB served Dec. 23, 2005). IORY states that it filed its verified notice for the Current Agreement under the trackage rights class exemption at 49 C.F.R. §1180.2(d)(7) but is filing this verified notice under 49 C.F.R. § 1150.41 because the Amended Agreement contains characteristics more closely aligned with a lease than a trackage rights agreement.

IORY certifies that the Amended Agreement does not include an interchange commitment.

IORY certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III carrier. IORY also certifies that its revenues currently exceed \$5 million. Pursuant to 49 C.F.R. § 1150.42(e), if a carrier's projected annual revenues will exceed \$5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, IORY's verified notice includes a request for waiver of the 60-day advance labor notice requirements. IORY's waiver request will be addressed in a separate decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 21, 2020.

All pleadings, referring to Docket No. FD 36401, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on

IORY's representative, Eric M. Hocky, Esq., Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to IORY, this action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c) and from historic preservation reporting requirements under 49 C.F.R. § 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 11, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.