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September 22, 2020

301108

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
September 22, 2020
Part of
Public Record

Re: STB Docket No. FD 36436
Central Railroad Company of Indianapolis
-Lease and Operation Exemption Exemption-
Norfolk Southern Railway Company

Dear Ms. Brown:

Enclosed for e-filing on behalf of Central Railroad Company of Indianapolis ("CERA") is a Notice of Exemption being filed pursuant to 49 U.S.C. §10902. The filing fee of \$2,200 was paid using Pay.gov.

Contained within this Notice of Exemption is a request for waiver from the notice requirements of 49 C.F.R. §1150.42(e).

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

Sincerely,

FILED
September 22 2020
SURFACE
TRANSPORTATION BOARD



Justin J. Marks
Counsel for Central Railroad Company of Indianapolis

Enclosures

FEE RECEIVED
September 22, 2020
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36436

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
– LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for Central Railroad
Company of Indianapolis*

Dated: September 22, 2020

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36436

CENTRAL RAILROAD COMPANY OF INDIANAPOLIS
– LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Central Railroad Company of Indianapolis (“CERA”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation CERA’s entry into an amended lease agreement (“Amended Agreement”) to amend the existing lease agreement (the “Current Agreement”), originally entered into between CERA and Norfolk Southern Railway Company (“NSR”) on September 14, 2009. The Current Agreement, and the Amended Agreement, allow for CERA to continue to lease and operate approximately 15.7 miles of rail line between milepost RK-154.5, a point just east of the grade crossing at 38th Street in Gas City, Grant County, Indiana, and milepost RK-138.8 at the end of the leased line at Harford City, Blackford County, Indiana (the “Rail Line”). The Amended Agreement and the Current Agreement also include operating rights into Goodman Yard and any sidings or sidetracks owned by NSR that are accessed via the Rail Line.

CERA and NSR wish to amend the Current Agreement to extend the term of the lease, to reduce the length of the leased rail line by 2 tenths of a mile¹ and to make other commercial revisions.

¹ Under the Amended Agreement, the leased track will end at milepost RK-138.8 whereas under

Notice

In accordance with 49 C.F.R. §1150.43, CERA hereby provides the following information:

(a) The full name and address of Applicant: Central Railroad Company of Indianapolis, 906 West Morgan Street, Kokomo, IN 46901.

(b) Applicant's Representatives:

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(c) CERA is currently the operator of the Rail Line under the Current Agreement.

See Central Railroad Company of Indianapolis – Lease and Operation Exemption – Norfolk Southern Railway Co., STB Finance Docket No. 35300 (served Oct. 21, 2009).

CERA and NSR have now entered into the Amended Agreement dated August 10, 2020 for continued operation of the Rail Line.

(d) The current operator of the Rail Line is CERA, and CERA will continue to be the operator after the transaction.

(e) Brief Summary of the Proposed Transaction: CERA is currently operating the

the Current Agreement the leased track ends at milepost RK-138.6.

Rail Line under the Current Agreement. This proposed transaction extends the term, and revises other commercial provisions, which will allow CERA to continue operating the Rail Line until December 31, 2024, or until the Amended Agreement is otherwise terminated in accordance with its terms.

- (1) The name and address of the owner of the Rail Line granting the operating rights is Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.
- (2) The Amended Agreement will be effective upon the effective date of this Notice of Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver). CERA is currently operating the Rail Line under the terms of the Current Agreement and will continue to do so until the Amended Agreement becomes effective.
- (3) The mileposts of the Rail Line are from milepost RK-154.5, a point just east of the grade crossing at 38th Street in Gas City, Grant County, Indiana, and milepost RK-138.8 at the end of the leased line at Harford City, Blackford County, Indiana. The lease also includes operating rights into Goodman Yard and any sidings or sidetracks owned by NSR that are accessed via the line described above. The Amended Agreement reduces the length of the leased rail line by 2 tenths of a mile ending the leased track at RK-138.8 whereas the Current agreement ends the leased track at RK-138.6.
- (4) The total distance to be leased and operated is approximately 15.7 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line.
- (g) CERA certifies that its projected revenues as a result of the transaction will not

exceed those that would qualify it as a Class III carrier.

- (h) CERA certifies that the Amended Agreement does not include an interchange commitment.
- (i) In addition to the information set forth above, CERA certifies that its revenues currently exceed \$5,000,000. However, since CERA will continue to be the operator of the Rail Line both before and after the transaction, CERA is requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). *See* request for waiver set forth below.

Labor Protection

CERA is a Class III carrier, and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since CERA is already the operator of the Rail Line, there will be no employees adversely affected by the Amended Agreement.

Environmental and Historic Reports

This is an extension of a lease agreement for continued rail operations that will not result in changes in carrier operations that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for CERA to discontinue (or for NSR to abandon service), or to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44.

**Request for Waiver of Notice Requirements
of 49 C.F.R. §1150.42(e)**

As noted above, CERA's (including all of its divisions) total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), CERA would be required to give sixty days' notice to employees working on the Rail Line (and the national offices of their collective bargaining representatives). However, the Board has held: "The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation." *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions ("Advanced Notice of proposed Transactions")*, 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that "exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ..." *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, CERA should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Line. CERA already operates the rail facilities and has been the sole common carrier operating on the Rail Line since 2009. The Amended Agreement extends the term of the Current Agreement and CERA will continue to be the sole common carrier operating over the Rail Line. No employees of the transferring carrier, NSR, have worked on the Rail Line since at least 2009, and there are no employees of NSR who will be affected or have to make any career choices as a result of the lease. Posting notices on the Rail Line would not provide notice to any NSR employees since none work on the Rail Line. Further, there will be no operational changes, and

no employees of CERA will be affected.² Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting CERA a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously leasing and to remain as the common carrier operator on the line. *See North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division – Lease Amendment Exemption – Norfolk Southern Railway Company*, STB Docket No. FD 35564 (Sub-No. 1) (served December 23, 2011). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served February 18, 2016).

CERA asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

² Notwithstanding that there will be no effect on employees of CERA, CERA is providing notice of the Amended Agreement to the national office of the unions that represents employees working on the Rail Line by serving it with a copy of this Notice of Exemption.

Conclusion

Accordingly, CERA requests that the Board issue a notice allowing the Amended Agreement to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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jmarks@clarkhill.com

*Attorneys for Attorneys for Central
Railroad Company of Indianapolis*

Dated: September 22, 2020

VERIFICATION

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

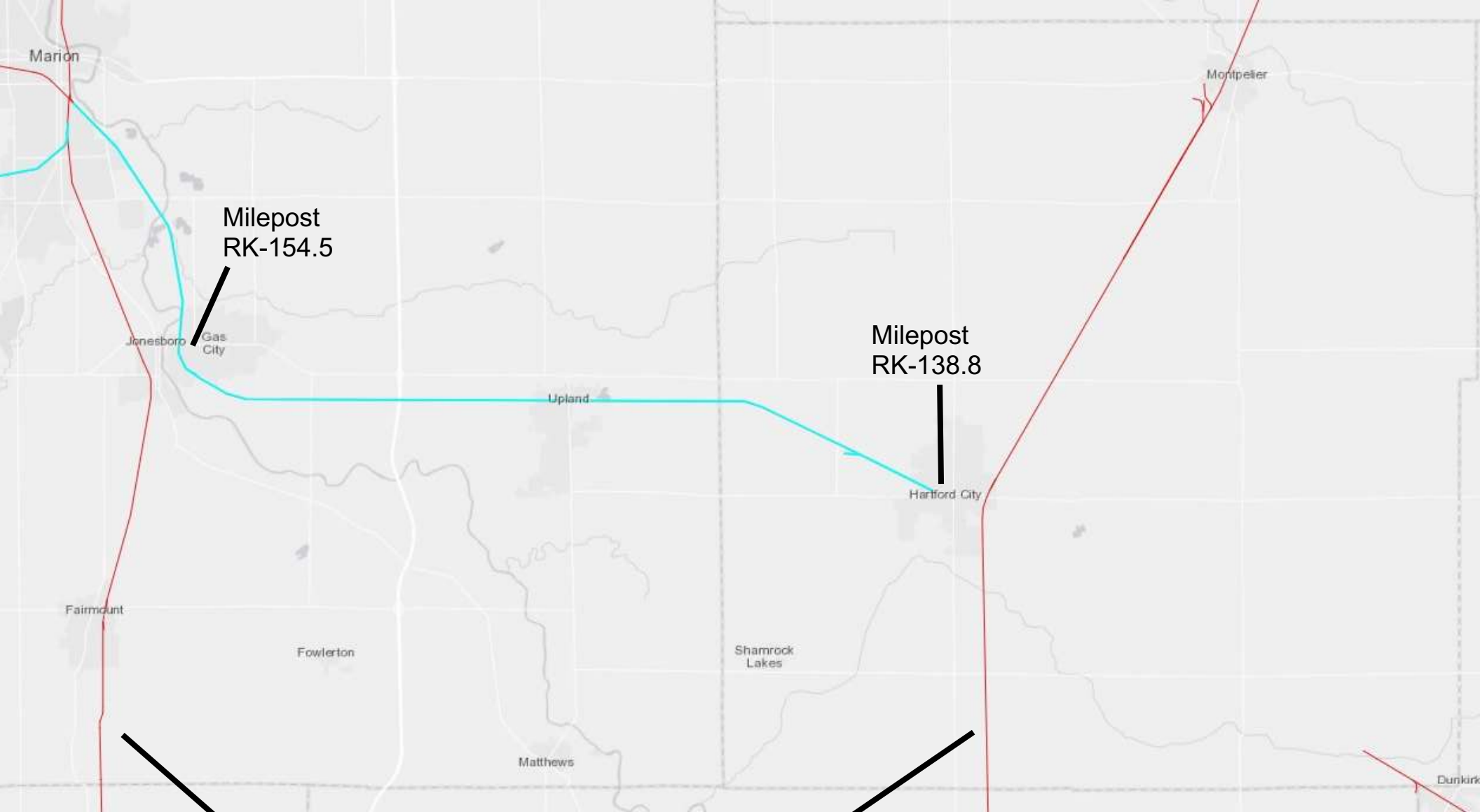
Executed on September 22, 2020.



Leonard Wagner, President

EXHIBIT A

MAP



Norfolk Southern Railway

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36436

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- LEASE AND OPERATION EXEMPTION –
NORFOLK SOUTHERN RAILWAY COMPANY**

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Comments must be filed with the Board and served on CERA’s representative, Eric M. Hocky, Esq., Clark Hill, PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103; (215) 640-8523.

The Notice is filed under 49 C.F.R. §1150.41. If the 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 transaction.

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

Decided: _____, 2020.

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

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email and U.S. first class mail, postage pre-paid on the following national representatives of CERA employees working on the Rail Line:

Brotherhood of Locomotive Engineers and Trainmen

Mr. Dwayne DeHart
2117 West Alto Road
Kokomo, IN 46902
dehart@blet-ns.com

Brotherhood of Railroad Signalmen

Mr. Mike Efaw
702 Ridgely Avenue
Fairmont, WV 26554
mle@brs.org
mefaw1@ma.rr.com

Brotherhood of Railroad Signalmen - MOW

John Heise
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551 Highland Way
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Justin J. Marks

Dated: September 22, 2020