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OEA

SERVICE DATE – MAY 14, 2021

**SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423**

DRAFT ENVIRONMENTAL ASSESSMENT

Docket No. AB 295 (Sub-No. 10X)

**Indiana Rail Road Company – Abandonment Exemption –
in Vigo County, Ind.**

BACKGROUND

In this proceeding, Indiana Rail Road Company (INDR) filed a notice of exemption under 49 C.F.R. § 1152.50 seeking exemption from the prior approval requirements of 49 U.S.C. § 10903 in connection with the abandonment of a line of railroad in Vigo County, Indiana. The rail line proposed for abandonment extends approximately 5.92 miles from milepost 6.48 to the end of the track at milepost 12.4 near Riley (the Line). A map depicting the Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA). If the notice becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The Line runs from the just north of Honey Creek east southeast towards and through the town of Riley, Indiana. The Line follows the Wabash and Erie Canal through a rural portion of Indiana. The right-of-way varies between 30 and 50 feet wide from the centerline track.

According to INDR, the property was acquired in 1872 by the Cincinnati & Terre Haute Railway (“C&TH”). The C&TH operated the Line at a loss between 1872 and 1877 until it was acquired through foreclosure by the Evansville & Terre Haute Railway (“E&TH”) in 1878. The E&TH was merged with other local railroads to become the Chicago & Eastern Illinois Railroad (“C&EI”) which operated from 1877 to 1976. The Line was spun off during a bankruptcy in 1920 to the Evansville Indianapolis & Terre Haute Railway (“EI&T”). The EI&T was part of a larger conglomerate that made up the Cleveland, Cincinnati, Chicago & St. Louis Railroad which operated under the New York Central. This became part of the Penn Central in 1968 and eventually part of Conrail in 1976.

In 1999, CSX Corporation, CSX Transportation, Inc.’s (“CSXT”) parent company, and Norfolk Southern Corporation jointly acquired control of Conrail, Inc and its wholly owned subsidiary, Consolidated Rail Corporation. In 2006, CSXT filed a Notice of Exemption to

abandon the Line. INDR filed an offer of financial assistance with the Surface Transportation Board (Board) to negotiate with CSXT for the Line. By quitclaim deed dated January 12, 2007, INDR acquired the Line.

According to INDR, several bridges are located on the Line. Bridge 20248 is located at railroad milepost 6.9 and is a 65-foot timber trestle bridge built in 1943 that crosses the Wabash and Erie Canal. Bridge 20249 is located at railroad milepost 7.2 and is a 65-foot timber trestle bridge built in 1940 that crosses a small waterway. Bridge 20251 is located at railroad milepost 8.4 and is a 78-foot timber trestle bridge built in 1940 that crosses Honey Creek. Bridge 20252 is located at railroad milepost 8.8 and is a 341-foot steel span over timber trestle bridge. The steel span was built in another location in 1915 but transferred to this location when the timber trestle was built in 1940. The bridge traverses Honey Creek. Bridge 20253 is located at railroad milepost 10.6 and is a 96-foot timber trestle bridge built in 1943 that crosses the Wabash and Erie Canal.

ENVIRONMENTAL REVIEW

INDR submitted a combined environmental and historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed abandonment of the Line, including salvage. INDR served the E&H Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)]¹ implementing the National Environmental Policy Act. The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

According to INDR, no local traffic has moved over the Line over the last two years, and overhead traffic on the Line has been rerouted. Therefore, the proposed abandonment would not result in the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network. Nor would the proposed abandonment adversely impact the development, use and transportation of energy resources or recyclable commodities or the transportation of ozone-depleting materials.

¹ The E&H Report is available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Filings" in the "Search for" dropdown menu; entering "AB" "295" "10" "X" sequentially in the four boxes for "Docket Number," then selecting "Search." The E&H Report was filed on April 21, 2021.

Salvage Activities

The salvage and disposal of a rail line typically includes the removal of tracks and ties, removal of ballast, dismantling of any bridges or other structures that may be present on the rail right-of-way, and regrading of the right-of-way. Salvage may be performed within the right-of-way, or, if necessary, via the construction of new access points to the right-of-way. INDR is not proposing any ground-disturbing salvage activities and intends to remove the rails and leave the ballast and ties in place and the underlying ground undisturbed. INDR intends to abandon the bridges, leaving them in place. INDR states that no new access roads are contemplated and access to the Line would be through the right-of-way itself and existing roadways.

According to INDR, the Line is not located within Indiana's coastal zone.

INDR requested comments from the U.S. Fish and Wildlife Service (USFWS) regarding the potential impact of the proposed abandonment to protected wildlife, including federally listed threatened and endangered species. To date, USFWS has not provided comments. To identify protected species in the project area, OEA conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.² Two protected threatened or endangered species are located in the area of the proposed abandonment: the threatened northern long-eared bat (*Myotis septentrionalis*) and the endangered Indiana bat (*Myotis sodalis*). According to the IPaC report, there is no critical habitat for these species in the project area. OEA has determined that these federally listed threatened or endangered species would not be affected because the felling of trees or alteration of habitat surrounding the Line is not contemplated; the project involves only removal of elements of a built environment unlikely to be suitable habitat for either species. OEA is providing USFWS Indiana Ecological Services Field Office a copy of this EA for its review.

The Indiana Department of Natural Resources (DNR) stated that the American badger (*Taxidea taxus*), a state species of special concern, has been documented within the project area, but noted that impacts to the American badger or its preferred habitat are unlikely as a result of this project. DNR also recommended that a mitigation plan be developed for any unavoidable impacts to riparian habitat. OEA does not believe the proposed abandonment would have such impacts if the Line were accessed using existing roadways and the right-of-way without creating additional access roads, as proposed by INDR. DNR also noted that the bridges present on the Line, and their supporting foundational structures, may be impeding upstream fish migration, and should be either removed or modified in such a way as to alleviate all aquatic organism passage obstruction potential prior to the abandonment of the rail line. DNR noted that its recommended mitigation measures are voluntary if DNR does not have permitting authority over the proposed project. Accordingly, OEA recommends that any decision imposed by the Board

² <http://ecos.fws.gov/ipac> (last visited May 12, 2021)

Docket No. AB 295 (Sub-No. 10X)

granting abandonment authority include a condition that INDR consult with DNR regarding appropriate bridge-related mitigation measures prior to the commencement of salvage activities.

The Indiana Department of Environmental Management (IDEM) determined that the proposed project area is not located within a Wellhead Protection Area to the best of their knowledge, but notes that in some areas data may be incomplete. IDEM also notes that the project area is not located within a Source Water Assessment Area for a Public Water Supply System's surface water intake. Because of the absence of Wellhead Protection and Source Water Assessment areas in the vicinity of the Line, and the limited scope of proposed salvage activities, OEA concludes that the proposed abandonment would not adversely impact ground or surface water municipal water supplies.

The National Geodetic Survey (NGS) has indicated that one geodetic survey marker is present in the right-of-way and could be disturbed by the proposed abandonment. Accordingly, OEA recommends a condition requiring INDR to notify NGS at least 90 days prior to beginning abandonment-related salvage activities to allow time for the geodetic survey marker to be preserved.

The Natural Resource Conservation Service (NRCS) replied to INDR's initial consultation letter and confirmed that the proposed abandonment would not cause a conversion of prime farmland. NRCS did not reply, to OEA's knowledge, to INDR's amended consultation letter changing the proposed abandonment's length from 4.05 miles to 5.92 miles. However, as the entirety of the Line consists of similarly situated rail track on compacted soils previously disturbed in construction and loaded with ballast, OEA believes that NRCS's conclusion for the shorter portion of the Line holds true for the amended longer length of the Line. However, OEA is forwarding this Draft EA to NRCS for their review.

OEA believes that any air emissions associated with abandonment activities would be temporary and would not have a significant impact on air quality. Similarly, any noise related to abandonment activities would also be temporary and should not have a significant impact on the area surrounding the proposed abandonment.

Based on all information available to date, OEA does not believe that the proposed abandonment would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the following agencies for review and comment: USFWS, DNR, NGS, and NRCS.

HISTORIC REVIEW

INDR submitted the E&H Report to the Indiana Department of Natural Resources, Division of Historic Preservation & Archaeology (State Historic Preservation

Docket No. AB 295 (Sub-No. 10X)

Office or SHPO) pursuant to 49 C.F.R. § 1105.8(c).³ Based on available information, the SHPO has submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected within the right-of-way (the Area of Potential Effect, or APE) of the proposed abandonment.

Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's E&H Report, all relevant correspondence, and this EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at www.stb.gov. Guidance regarding the Board's historic preservation review process is available on the Board's website at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

SHPO also noted that if any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, state law (Indiana Code 12-21-1-27 and 29) requires that the discovery must be reported to DNR within two business days, in addition to other applicable federal statutes and regulations, including but not limited to 36 C.F.R. §800. Accordingly, OEA is recommending the addition of an inadvertent discovery condition to any decision granting abandonment authority.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development's Tribal Directory Assessment Tool (TDAT) to identify federally recognized Tribes that may have ancestral connections to the project area.⁴ The database indicated that the following federally-recognized Tribes may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment: Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, Miami Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, and Seneca-Cayuga Nation. Accordingly, OEA is sending a copy of this Draft EA to these Tribes for review and comment.

³ Applicants seeking authority from the Board to abandon railroad lines may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. § 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found at a link on the bottom of the Board's website overviewing historic preservation at <https://prod.stb.gov/resources/environmental/historic-preservation-overview>.

⁴ U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tdat> (last accessed May 12, 2021).

CONDITIONS

OEA recommends that the following conditions be imposed on any decision granting abandonment authority:⁵

1. Indiana Rail Road Company shall consult with the Indiana Department of Natural Resources regarding potential bridge-related mitigation measures prior to the commencement of salvage activities.
2. Indiana Rail Road Company shall notify the National Geodetic Survey at NGS.Infocenter@noaa.gov at least 90 days prior to beginning abandonment-related salvage activities.
3. In the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during the Indiana Rail Road Company's (INDR) abandonment-related salvage activities, INDR will immediately cease all work and notify the Board's Office of Environmental Analysis (OEA), interested Federally recognized Tribes, and the Indiana State Historic Preservation Office (SHPO) pursuant to 36 C.F.R. § 800.13(b). OEA will then consult with the SHPO, interested Federally recognized Tribes, the railroad, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, if the recommended conditions are imposed, abandonment of the Line would not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for

⁵ If an interim trail use agreement under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29 is reached for the Line (or a portion thereof), compliance with these conditions is not required with respect to any portion of the Line covered by the interim trail use agreement for the duration of the agreement.

other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Board's Federal Register notice of the proposed abandonment. The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁶

TRAIL USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29). The Federal Register notice is also issued as a Board decision and is available on the Board's website.⁷

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

As of March 17, 2020, all filings and other submissions should be submitted electronically through the Board's website at <https://prod.stb.gov>. To submit a comment on the Draft EA, select "File an Environmental Comment" under "Need Assistance?" on the Board's home page. Brief comments can be typed in the comment field provided, and lengthier comments can be attached as Word, Adobe Acrobat or other file formats. If you have any questions, please contact Adam Assenza by email at Adam.Assenza@stb.gov or by phone at 202-245-0301.

Date made available to the public: May 14, 2021.

⁶ Board decisions are available for viewing on the Board's website at <https://prod.stb.gov> by clicking "Search STB Records," selecting "Decisions" in the "Search for" dropdown menu; entering "AB" "295" "10" "X" sequentially in the four boxes for "Docket Number," then selecting "Search."

⁷ Id.

Docket No. AB 295 (Sub-No. 10X)

Comment due date: May 31, 2021.

By the Board, Danielle Gosselin, Acting Director, Office of Environmental Analysis.

Attachment

