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September 24, 2021
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September 24, 2021

VIA E-FILING

49 C.F.R. §1150.42(e) WAIVER REQUESTED

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

Re: STB Docket No. FD 36538
The Central Railroad Company of Indiana
-Acquisition and Operation Exemption-
Patton-Lowe RR, Inc.

Dear Ms. Brown:

Enclosed for e-filing on behalf of The Central Railroad Company of Indiana ("CIND") is a Notice of Exemption being filed in accordance to 49 CFR 1150.43. Included within this Notice of Exemption is a request for waiver of the notice requirements of 49 C.F.R. §1150.42(e).

The filing fee was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,



Justin J. Marks
The Counsel for Central Railroad
Company of Indiana

Enclosure

FEE RECEIVED
September 24, 2021
SURFACE
TRANSPORTATION BOARD

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Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36538

THE CENTRAL RAILROAD COMPANY OF INDIANA
– ACQUISITION AND OPERATION EXEMPTION –
PATTON-LOWE RR, INC.

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

(includes color images)

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*Attorneys for The Central Railroad
Company of Indiana*

Dated: September 24, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36538

**THE CENTRAL RAILROAD COMPANY OF INDIANA
– ACQUISITION AND OPERATION EXEMPTION –
PATTON-LOWE RR, INC.**

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

The Central Railroad Company of Indiana (“CIND”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation CIND’s entry into a Transaction Agreement (“Transaction Agreement”) with Patton-Lowe RR, Inc. (“PLRI”) for CIND to acquire and operate a line of railroad between approximately milepost 64.43 at Craig (east of the SR46 Grade Crossing, at a point of connection with CIND’s Westport Industrial Track near CIND milepost 225.0) to the point that is 100 feet east of the switch located at approximately milepost 64.61 (the “Rail Line”).

In addition, CIND has contemporaneously entered into a trackage rights agreement for CIND to acquire incidental trackage rights over a connecting PLRI rail line from 100 feet east of the switch located at approximately milepost 64.61 to approximately milepost 64.80, also at Craig (near the intersection of N. County Road 250 W and West Base Road) (the “PLRI Trackage”). The trackage rights will allow CIND to use the PLRI Track to provide local and overhead service to customers.

Notice

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

- (a) The full name and address of Applicant: The Central Railroad Company of Indiana, 200 Meridian Centre, Suite 270, Rochester, NY 14618.

- (b) Applicant's Representatives:

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- (c) CIND has entered into a Transaction Agreement with PLRI for the acquisition of the Rail Line, and a Trackage Rights Agreement to provide incidental local and overhead trackage rights over the PLRI Trackage. The parties to the Transaction Agreement also include Lowe's Pellets and Grain, Inc. ("Lowe's"), the parent company of PLRI, and Next Generation, Inc. ("NEXTGEN"). In addition to CIND's acquisition of the Rail Line from PLRI, the Transaction Agreement also provides for the rehabilitation of certain track to allow CIND to access the PLRI Trackage and the Lowe's and NEXTGEN facilities.

(d) No operator currently exists on the Rail Line. As described below, PLRI acquired the Rail Line and PLRI Trackage from Conrail in 2020, but has never operated the Rail Line or PLRI Trackage.

(e) Brief Summary of the Proposed Transaction: CIND has entered into a Transaction Agreement with PLRI for the acquisition of the Rail Line. The parties to the Transaction Agreement also include Lowe's and NEXTGEN. In addition to CIND's acquisition of the Rail Line from PLRI, the Transaction Agreement provides for infrastructure improvements facilitating CIND's access to the adjacent PLRI Trackage and the Lowe's and NEXTGEN facilities.

CIND has contemporaneously entered into a trackage rights agreement with the seller PLRI for CIND to acquire incidental local trackage rights over the PLRI Trackage allowing CIND to provide local service to Lowe's (and any other local customers) and will allow for CIND to provide for overhead movements across the PLRI Trackage to access NEXTGEN.

PLRI acquired the Rail Line and the PLRI Trackage from Conrail in 2020.¹ As explained in the PLRI Acquisition Notice, CIND had provided direct rail service to Lowe's but stopped providing service upon its realization that Conrail owned the Rail Line and the PLRI Track. CIND understands that since PLRI acquired both lines from Conrail, PLRI has not operated or provided rail service. The Transaction Agreement and the incidental trackage rights agreement will allow CIND to resume offering rail service on the Rail Line and the PLRI Trackage.

¹ *Patton-Lowe RR, Inc. – Acquisition Exemption – Consolidated Rail Corp.*, STB Finance Docket No. 36366 (served Jan. 3, 2020).

- (1) The name and address of the railroad transferring the subject property is Patton-Lowe's RR, Inc., 2372 West State Road 46, Greenburg, IN 47240.
- (2) The Transaction Agreement and incidental trackage rights 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).
- (3) The mileposts of the Rail Line CIND is acquiring from PLRI are from approximately milepost 64.43 at Craig (east of the SR46 Grade Crossing, at a point of connection with CIND's Westport Industrial Track near CIND milepost 225.0) to the point that is 100 feet east of the switch located at approximately milepost 64.61. The mileposts of the incidental trackage rights CIND is acquiring from PLRI is from approximately 100 feet east of the switch located at approximately milepost 64.61 to approximately milepost 64.80, also at Craig (near the intersection of N. County Road 250 W and West Base Road).
- (4) The total distance of the Rail Line to be acquired and operated is approximately 0.18 miles. The total distance of the PLRI Trackage subject to the incidental trackage rights is approximately 0.19 miles.
- (f) Attached as Exhibit A to this Notice of Exemption is a map of the Rail Line and the PLRI Trackage.
- (g) CIND 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) CIND certifies that neither the Transaction Agreement nor the trackage rights agreement include an interchange commitment.
- (i) In addition to the information set forth above, CIND certifies that its revenues

currently exceed \$5,000,000. However, no employees will be affected by the transaction because it appears that PLRI never commenced common carrier operations over the Rail Line or the PLRI Trackage and PLRI has no railroad employees. Further, prior to PLRI's acquisition of the lines from Conrail, CIND provided rail service. CIND is therefore 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

CIND 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 CIND was the last operator of the Rail Line prior to PLRI's acquisition of the Rail Line and the PLRI Trackage, there will be no employees adversely affected by the Transaction Agreement.

Environmental and Historic Reports

These agreements are 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 CIND to abandon service on the Rail Line and to discontinue its trackage rights over (or for PLRI to abandon) the PLRI Trackage, 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, CIND's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), CIND 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, CIND should not be required to comply with the requirements of Section 1150.42(e) because there are no PLRI employees working on the Rail Line or the PLRI Trackage since PLRI never offered any rail service. As explained in the PLRI Acquisition Notice², CIND had provided direct rail service to Lowe's but stopped providing service upon its realization that Conrail owned the Rail Line and the PLRI Trackage. CIND understands that since PLRI acquired both lines from Conrail, it has not provided rail service and has no employees. The Transaction Agreement and the trackage rights agreement will allow CIND to resume offering

² *Supra* n. 1.

rail service on the Rail Line and the PLRI Trackage. CIND will not need to hire any additional employees to provide service over the Rail Line and PLRI Trackage.

Posting notices on the Rail Line would not provide notice to any PLRI employees since none work on the Rail Line.³ 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 CIND a waiver would be consistent with other circumstances in which the Board has granted waivers from the labor notice requirements when a common carrier sells a line, but no employees of the seller would be impacted, thus negating the need for advance notice. *Columbia Basin R.R. Co., Inc – Acquisition and Operation Exemption – BNSF Railway Company and BNSF Acquisition, Inc.* STB Finance Docket No. 35066 (served Nov. 30, 2007); *Reading Blue Mountain & Northern R.R. Co., - Acquisition and Operation Exemption – Locust Valley Coal Co., d/b/a Locust Valley Line*, STB Finance Docket 36033 (served June 7, 2016).

CIND 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.

³ Additionally, there are no labor unions with employees working on the Rail Line so there are no unions to serve with any advanced labor notice.

Conclusion

Accordingly, CIND requests that the Board issue a notice allowing the Transaction Agreement and the incidental trackage rights agreement to become effective 30 days from the filing of this Notice of Exemption.

Respectfully submitted,



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*Attorneys for Attorneys for The Central
Railroad Company of Indiana*

Dated: September 24, 2021

VERIFICATION

I hereby verify on behalf of The Central Railroad Company of Indiana, 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 24, 2021.



Leonard Wagner, President

EXHIBIT A

MAP

EXHIBIT A



PLRI Trackage
(Incidental Trackage Rights)

The Rail Line



Genesee & Wyoming Railroads

CIND The Central Railroad Company of Indiana
IORY Indiana & Ohio Railway Company
ISRR Indiana Southern Railroad, LLC

Dashed line indicates Trackage Rights.
03/2019

EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36538

**THE CENTRAL RAILROAD COMPANY OF INDIANA
- ACQUISITION AND OPERATION EXEMPTION –
PATTON-LOWE RR, INC.**

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

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: _____, 2021.

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