

SERVICE DATE – OCTOBER 22, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36538

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

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:<sup>1</sup> This decision waives a 60-day advance labor notice requirement and allows the Central Railroad Company of Indiana to acquire from Patton-Lowe RR, Inc., and operate approximately 0.18 miles of rail line in Indiana on or after October 24, 2021.

Decided: October 21, 2021

On September 24, 2021, the Central Railroad Company of Indiana (CIND), a Class III railroad, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Patton-Lowe RR, Inc. (PLRI), and operate a rail line from approximately milepost 64.43 at Craig<sup>2</sup> (east of the SR46 Grade Crossing, at a point of connection with CIND's Westport Industrial Track near CIND milepost 225.0) to 100 feet east of the switch at approximately milepost 64.61 (the Line). (Verified Notice 2.) The verified notice states that CIND and PLRI have entered into an agreement (Transaction Agreement)<sup>3</sup> for CIND's acquisition of the Line as well as an agreement for CIND to acquire incidental trackage rights over a connecting PLRI rail line (PLRI Trackage), which will allow CIND to provide local and overhead service to customers.<sup>4</sup> (Id.)

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Craig is an unincorporated railroad location immediately west of the boundary of the City of Greensburg, Ind. See Patton-Lowe RR—Acquis. Exemption—Consol. Rail Corp., FD 36366, slip op. at 1 n.1 (STB served Jan. 3, 2020).

<sup>3</sup> 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). (Verified Notice 3.)

<sup>4</sup> 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. (Id. at 3.)

In its verified notice, CIND certifies that its current annual revenues exceed \$5 million. (*Id.* at 5-6.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require CIND, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction setting forth certain information 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, the verified notice includes a request for waiver of those notice requirements.

CIND argues that the labor notice requirements should be waived because there are no PLRI employees working on the Line or the PLRI Trackage, as PLRI never offered any rail service, and CIND itself was the last carrier to operate on the Line (before PLRI acquired the Line and the PLRI Trackage from Consolidated Rail Corporation in 2020), so no employees will be adversely affected by the transaction. (Verified Notice 4, 7.) No opposition to this waiver request has been filed.

Notice of CIND's acquisition and operation exemption was served and published in the Federal Register on October 8, 2021 (86 Fed. Reg. 56,345). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

## DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 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. The Board takes seriously the notice requirements, but it does not appear that the purpose behind the requirements would be thwarted if the requested waiver is granted in this case.

As noted above, PLRI does not have any employees operating on the Line, as PLRI has not provided operations on the Line since acquiring it in 2020 and has no railroad employees. (Verified Notice 7-8.) CIND indicates that it will be able to resume the service it provided previously after the exemption becomes effective.<sup>5</sup> (Verified Notice 7-8.) Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, the lease and operation exemption, unless stayed, will become effective on October 24, 2021, the effective date under the Board's rules absent the notice requirement. See, e.g., N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—Lease Amend. & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252, slip op. at 2 n.3, 3 (STB served Dec. 14, 2018).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

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<sup>5</sup> CIND previously operated over the Line to provide direct rail service to Lowe's for several years but declined to provide service when it realized it appeared Conrail owned the Line. See Patton-Lowe RR, FD 36366, slip op. at 1. Subsequently, Lowe's created PLRI to purchase the Line from Conrail, which confirmed its ownership of the Line. *Id.*

It is ordered:

1. CIND's request for waiver is granted.
2. CIND's exemption will be effective on October 24, 2021, unless stayed.
3. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.