

SERVICE DATE – APRIL 6, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36591

LOUISVILLE & INDIANA RAILROAD COMPANY
—ACQUISITION AND OPERATION—
SOUTHERN INDIANA RAILWAY, INC.

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

Digest:¹ This decision waives a 60-day advance labor notice requirement and allows Louisville & Indiana Railroad Company to acquire from Southern Indiana Railway, Inc., and operate approximately 7.41 miles of rail in Indiana beginning on or after April 10, 2022.

Decided: April 5, 2022

On March 11, 2022, Louisville & Indiana Railroad Company (LIRC), a Class III railroad, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from Southern Indiana Railway, Inc. (SIND), and operate a rail corridor from north of the intersection of “highway 403” at Speed, Ind. (SIND Speed Property), southerly to a connection with a rail line of CSX Transportation, Inc., at Watson Junction, in Clark County, Ind., including yard tracks located on the real property of Lehigh Cement in Speed, north of the SIND Speed Property (the Line).² (Verified Notice 3.) The verified notice states that LIRC and SIND have entered into an asset purchase agreement (Purchase Agreement), and that LIRC will become the operator of the Line upon the exemption’s effective date. (Id. at 2-3.)

LIRC certifies that its current annual revenues exceed \$5 million. (Id. at 12.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require LIRC, 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.

¹ 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).

² According to the verified notice, the rail corridor and yard tracks total approximately 7.41 miles. (Verified Notice 3.)

LIRC argues that the labor notice requirements should be waived because there are no SIND employees working on the Line. According to LIRC, SIND has advised LIRC that, for at least two years, SIND has not moved any traffic over the property for customers and has not had any employees working on the property, so no employees would be adversely affected by the transaction. (Verified Notice 3.) No opposition to this waiver request has been filed.

Notice of LIRC's acquisition and operation exemption was served and published in the Federal Register on March 25, 2022 (87 Fed. Reg. 17,107). 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, SIND does not have any employees operating on the Line, as SIND has not provided operations on the Line for at least two years and has no railroad employees. (Verified Notice 3.) Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the waiver will be granted. Accordingly, the lease and operation exemption, unless stayed, will become effective on April 10, 2022, 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).

It is ordered:

1. LIRC's request for waiver is granted.
2. LIRC's exemption will be effective on April 10, 2022, unless stayed.
3. This decision is effective on its date of service.

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