



Indianapolis Metropolitan Railway Company

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244147

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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: Docket No. FD 36137

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding is a comment from the Indianapolis Metropolitan Railway Company regarding the Petition for Partial Revocation of Exemption of the Cities of Fishers and Noblesville, Indiana, and Hamilton County, Indiana, dated August 1, 2017.

Should any questions arise during this filing, please feel free to contact me. Thank you for your help on this matter.

Kind Regards,

Connor Doornbos
Executive Director
Indianapolis Metropolitan Railway Company
2727 E. 55th Street, #55463
Indianapolis, IN 46205
Phone: 317-782-5900

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36137

-- COMMENT --

We, the Indianapolis Metropolitan Railway Company and the Central Indiana Railroad Museum (Hereby referred to as “We”, “Our”, or “IMRY/CIRM”), submit this reply to the Petition of Partial Revocation - Cities of Fishers, Noblesville and Hamilton County, Indiana (STB FD 36137) (“Owners”). We reply to state our agreements and disagreements of various points in the Owners petition. Further of this reply will also focus on the actions taken by the Owners to obtain the railroad and the history of the infrastructure along with the interests of the communities and businesses located along this railroad.

INTEREST

It is the interest of the IMRY and CIRM to operate a railway over the Line which is the subject of the Owners’ petition.

THE LINE

The “Line” is an easement and railroad that roughly extends 37.56 miles from Indianapolis to Tipton, Indiana. The Line was approved by the ICC in 1991 in Norfolk and Western – Abandonment Exemption – Between Indianapolis and Tipton in Marion, Hamilton, and Tipton Counties, IN, Docket No. AB-290 (Sub-No. 117X), Et Al. (Decided Nov 4, 1991) (“*Norfolk Abandonment*”). The operator of record and common carrier being the Indiana Railroad, serving the line from 1989 to 2003 (Indiana Rail Road – Lease and Opreation Exemption – Norfolk and Western Railway Company) (1989) Further Details regarding the Line can be found in the Owners’ Petition.

FOR CONSIDERATION AND DISCUSSION

The following is the point by point reply regarding the respective points in the Owners' petition, each with evidence and precedence as needed. Each point will be quotes from the Owners' petition (FD-36137) which we will concur or disagree with evidence or precedence to support our position.

1. To the point regarding "The Line was not fully abandoned – only 'approved for abandonment.'" (STB FD-36137, Page 5)
 - a. While the IMRY and CIRM concur with this point from the standpoint of their being ICC approval, we have significant issue with the notion that "[The Owners] are categorically exempt from the Agency's [STB] Jurisdiction" and that the Owners "...are free to retain or dispose of the Line at their collective discretion without the need to invoke any STB procedures if they so wished." The following points are evidence and precedence supporting our belief. It is our belief that the line is still under the jurisdiction of the STB and must be put through the formal abandonment and service discontinuance process
 - i. Firstly, "indicta" of abandonment was never realized on this Line. As per the Owners and precedence as per the case of Texas Mexican Railway Company – Purchase Exemption – Union Pacific Railroad Company (FD – 33914). The TMRC wished to buy a line from UPRR that had been previously approved for abandonment by the ICC. The STB decided that, among other factors, that "...no part of the right-of-way was transferred, that the integrity of the rail corridor has been maintained, and the Line's bridges, culverts, ballast, grading, and most of its track and ties remain in place... Based on facts of record in this and other proceedings before the Board... We would conclude that the abandonment of the Line had not been consummated."
 - ii. Secondly, ownership of the line from abandoning N&W to the current Owners took place post the *Norfolk Abandonment*. While the line was "approved for abandonment" the line's sale was not exempt from ICC/STB approval. While in Preseault v. ICC (1986) the court ruled that the "ICC's power and jurisdiction ended after certificate of abandonment was issued." It can be argued that as seen in other ICC filings and dockets of the period, it was common place for railroad companies to submit their voluntary "consummation" of an abandonment and request a "Certificate of Abandonment" for use in transfer of the right-of-way or other purposes. It also should be noted that a "Certificate of Abandonment" was the confirmation, not just a decision, from the ICC that an abandonment was full and complete. As there is no record of a letter from N&W regarding the abandonment of the line (See point (1)(a)(iv) for further details), there is

also not record of an issuance of a Certificate of Abandonment, only approval.

- iii. Further, rail operations to over 15 rail customers (22 were listed in 1992 along the abandoned portion, per multiple sources) who received continued operations post the point of approval of the *Norfolk Abandonment*. INRD was used as the primary freight operator of the line all the way up until 2003 (See (b) and (c) of this part for further detail). However, while the approval of abandonment from the ICC wasn't obtained, no indication of abandonment occurred. Very little to no railroad was torn up nor were the national network connections at either end (Northern End, Norfolk Southern; Southern End, CSX/Belt Railway of Indianapolis) ever properly or legally removed. Indiana Railroad's 2012 System Map and CSX Employee Timetables still contained connections and instructions regarding the Line. Of trains that passed onto the Line, most were from the southern end of the railway to all points between over the corridor and the northern end with some equipment retrieved, interchanged, or delivered to and from that end.
- iv. Finally, regarding the joint-petition INRD/N&W filed in 1991. A question here lingers, this due to the case of *Mich. Dep't of Natural Res. v. Carmody-Lahti Real Estate, Inc.* that "an abandonment 'involves relinquishing rail lines and underlying property interests,' whereas discontinuance 'allows a railroad to cease operating a line for an indefinite period while preserving the rail corridor for possible reactivation of service in the future.'" The IMRY and CIRM believe and argue that the N&W wished only for the approval to abandon and not actually to fully abandon the rail line. To prevent the sale of their rights of the easement without ICC approval. The reasoning that if the N&W did wish to "Relinquish the rail line and underlying property interests," and since the Indianapolis & Peru Railway (the predecessor and obtainer of the original right-of-way easement) did obtain the right-of-way as an easement and not by deed, that if the N&W did fully abandon the rail line that the easements would revert. Since this is not the case, as the easement and railroad still exists, it is apparent that the N&W did not complete the abandonment and thus the exemption was never utilized. That exemption only related to the N&W, not the political subdivision of the state being the Owners. Moreover, the INRD continued to operate the corridor from 1989 to 2003. Maps of the INRD in as late as 2012 show the rail line as active trackage of their system, in both terminal and system maps.

2. Regarding “The Owners are categorically exempted from the STB’s Jurisdiction.” (STB FD-36137,

Page 6)

- a. We fervently disagree with the Owners that they, or the Line, are exempt from the Board’s jurisdiction.
 - i. The Owners, in their petition, state correctly that the political subdivisions of the State are not common carriers unless they themselves are the operator of the line. However, the Owners use a very out-of-context reading of the statute their petition. The Owner is a non-carrier or “get” the common carrier obligation if they are in contract with an operator who takes on the obligation. It is clear from the Owners’ petition that they do not have a clear understanding of when or whom the common carrier obligations passed from/to when N&W got approval for abandonment. In the ICC Approval of the *Norfolk Abandonment*, it was ordered that they were exempt from 49 USC 10903-10904. The ICC decision does not explicitly exempt the N&W or INRD from 49 USC 11101, or as referred to by the Owners as part of the “Common Carrier Status.” While the code does allow for a state political subdivision to be a non-carrier, the Supreme Court of the United States in Am. Trucking Ass’n v. Atchison, Topeka, & Santa Fe Ry. Co. held that “...Obligation as common carriers is comprehensive and exemptions are not to be implied.” The ICC decision, again, **did not** explicitly exempt either the N&W or INRD from their obligation of their common carrier status. The ICC decision only allowed for exemption from the provisions regarding abandonment and related laws.
 - ii. Regarding the former line operator, the Indiana Railroad (“INRD”), who leased the line from 1989 to 1991 and operated the line from 1989 to 2003. The *Norfolk Abandonment* clearly states that the line was exempted from abandonment related codes in 49 USC and, while not “ordered”, states that the “INRD’s contractual right and obligation to operator of the line will cease on November 30th, 1991.” Now the decision of the ICC says the ability and right of the INRD to operate on the line along with its common carrier obligation (It is so assumed), However, Common Carrier obligations and exemptions cannot be implied per the previously referenced case in the last point. This being the case, the obligation was violated by both the operator and then owner, as multiple rail shippers still received service on the corridor. These services continued from the approval of abandonment to on or about 2003, when the final major freight shipper ceased operations. Moreover, the corridor did have one final shipper and receiver of rail based equipment and cargo, the Indiana Transportation Museum. In the *Norfolk Abandonment*, they are

listed as one of the customers of the line who received a letter regarding the N&W/INRD joint petition. As previously noted as well, INRD terminal and system maps in 2012 showed the Owners trackage as active and operated.

CONCLUSION

It is requested by the IMRY and CIRM that the Surface Transportation Board:

1. Find that the STB's jurisdiction of the line is still in effect, as the N&W is no longer in ownership of the line.
2. That the Owners must file for the revocation of exemption for the entire original abandonment, all 37.56 miles.
3. That the Owners must file for abandonment exemption of the entire Line, all 37.56 Miles, allowing for comment, Offers of Financial Assistance, Public Use Conditions, etc. as in accordance with all laws, codes, and rules governing abandonment, rail banking, and Interim Trail Use.

In conclusion, the Indianapolis Metropolitan Railway Company and Central Indiana Railway Museum respectfully urge the Surface Transportation Board to deny the Owner's Petition of Partial Exemption with regard to the argument listed above.

We also respectfully request the Board to issue that denial in regard to our requests and suggestions listed above, to allow and enable a fair and equal chance for the Line to return to railroad service once again.

We sincerely thank the Board for the attention to this letter and look forward to their decision on this matter.

Sincerely,



Connor Doornbos
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Indianapolis, IN 46205
Phone: 317-782-5900

I certify that I have this day served copies of the document upon the Applicant in this proceeding, by [U.S. Mail or E-mail].

Signature /s/Connor Doornbos Date __8/21/17__