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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36147

ENTERED
Office of Proceedings
October 5, 2017
Part of
Public Record

**CHESAPEAKE AND INDIANA RAILROAD COMPANY
—OPERATION EXEMPTION—
TOWN OF NORTH JUDSON, INDIANA**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Submitted By:

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicant

Dated: October 5, 2017

**FILED
October 5, 2017
SURFACE
TRANSPORTATION BOARD**

**FEE RECEIVED
October 5, 2017
SURFACE
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PURSUANT TO 49 U.S.C. §10902 and 49 CFR §1150.41**

Chesapeake and Indiana Railroad Company (“CKIN”), an existing Class III short line railroad common carrier, files this Notice of Exemption, pursuant to 49 C.F.R. §1150.41, *et. seq.*, with the Surface Transportation Board (the “Board”) to permit it to enter into a new agreement for the operation of a rail line owned by the Town of North Judson, IN (“the Town”). The subject line extends between milepost CF 0.23, at LaCrosse, and milepost CF 15.23, at Wellsboro, and between milepost CI 218.0, at English Lake and milepost CI 230.92, at Malden, and (“the Line”), a total of 27.92 miles of trackage in LaPorte, Porter and Starke Counties, IN. CKIN has been operating the Line since July 31, 2004.

A map depicting the Line is shown on the attached Exhibit A.

INFORMATION REQUIRED BY 49 CFR §1150.43

Name and Address of Applicant 49 CFR §1150.43(a)

Chesapeake and Indiana Railroad Company
c/o Indiana Boxcar Corp.
916 Vine Street
Connersville, IN 46975

Name and Address of Applicant's Representative 49 CFR §1150.43(b)

John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Ave., N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Statement of Agreement 49 CFR §1150.43(c)

CKIN and the Town executed a new ten year agreement¹ on September 11, 2017, for CKIN to continue to operate over the Line owned by the Town.

Operator of the Property 49 CFR §1150.43(d)

CKIN is currently the operator and will continue to be the operator under this new agreement.

Summary of Transaction 49 CFR §1150.43(e)

This transaction comes as the result of a settlement of a dispute between CKIN and the Town.

As background, in 2004 the Town originally acquired approximately 32.97 miles of railroad including the Line through an offer of financial assistance

¹ The Agreement is automatically renewable at CKIN's option for two additional 5 year terms for a total occupancy of 20 years.

transaction from CSX Transportation.² The Town selected CKIN to operate the Line pursuant to an Operating Agreement executed on July 31, 2004.³ Although that agreement was to have expired on December 31, 2015, the parties extended it several times. CKIN has continued to operate over the Line through the current date.

Disputes eventually arose between the parties prompting the Town to advise CKIN that the agreement would not be renewed or extended upon its expiration. The Town then initiated procedures preparatory to filing an “adverse” discontinuance application which CKIN opposed.⁴ Subsequently, the parties agreed to mediate their dispute and to extend the operating agreement, at first until May 15, 2016, and later until August 15, 2016. During the course of these extensions, the Town solicited bids for new operators. CKIN – believing that the Town’s actions violated the spirit of a settlement agreement reached through mediation⁵ – initiated litigation in state court⁶ and before the Board.⁷ Ultimately,

² See, *CSX Transportation, Inc.-Abandonment Exemption-In Laporte, Porter, and Starke Counties, IN*, Docket AB-55 (Sub-No. 643X), STB served May 14, 2004.

³ The STB originally authorized CKIN’s operations in *Chesapeake & Indiana Railroad Company, Inc.-Operation Exemption-The Town of North Judson, IN*, STB Finance Docket No. 34529, STB served Aug. 20, 2004.

⁴ Docketed as *Town of North Judson, IND.-Adverse Discontinuance of Service In LaPorte, Porter and Starke Counties, IND*, Docket AB-1232.

⁵ CKIN believed that the settlement contemplated that the Town would lease the Line to the principal shipper, Co-Alliance, Inc., which would then contract with CKIN to continue operating over it.

the Town indicated a desire to reach a settlement with CKIN. The parties met on August 14, 2017, and reached a mutually satisfactory settlement several weeks later. Under the terms of that settlement the Town agreed to execute a new operating agreement with CKIN for that carrier to continue providing service over the Line in exchange for a termination of all litigation.⁸ Under the terms of that settlement and as noted above CKIN will file a class exemption notice under the Board's out of service line discontinuance procedures of 49 CFR Part 1152.50 for a five mile segment of track owned by the Town on which there are no freight customers or current prospects for freight business.⁹

⁶ *The Chesapeake And Indiana Railroad Company, Inc., v. Incorporated Town of North Judson*, Docketed as Cause No. 46C01-1610-PL, LaPorte County Indiana Circuit Court.

⁷ CKIN filed a Petition to Reopen the Offer of Financial Assistance Proceeding and for declaratory relief. Those cases are docketed as AB. 55 Sub-no. 643x and FD 36076, respectively.

⁸ CKIN filed notices with the Board dismissing with prejudice its litigation before the Board and an Indiana state court on September 14, 2017. The settlement also allows the Hoosier Valley Railroad Museum ("HVRM") to provide a limited number of excursion passenger trips annually over the Line.

⁹ The segment of railroad between MP CI 212.55 at or near North Judson and MP CI 218.0 at or near English Lake has had no shippers and no demand for freight in many years. Accordingly, it is not included in this notice for operating authority and CKIN will be filing a notice of discontinuance under the Board's out of service discontinuance procedures at 49 CFR §1152.50. CKIN is willing to consider providing service over that track as a "private carrier" pursuant to a contract with a customer should there be a sufficient demand to warrant service. The Board has previously approved such arrangements. *See, e.g., HC Railroad, LLC-Abandonment Exemption-In Rush County, IND.*, Docket AB-1250 (Sub-No. 1X)(STB served June 20, 2017); *Cf. Consolidated Rail Corp.-Abandonment in Jeanette, PA*, 366 I.C.C. 384 (1982)(holding that the post-abandonment handling of local traffic under contract is not subject

- (1) The name and address of the subject Line's owner:

The Town of North Judson, Indiana
310 Lane Street
North Judson, IN 46975

- (2) The proposed time schedule for consummation of the transaction:

This operating agreement will be effective upon the effective date of this
Notice of Exemption, 30 days from the date of filing.

- (3) The length of the Line subject to the operating agreement: approximately
27.92 miles.

Map 49 CFR §1150.43(f)

A map depicting the involved operation is attached as Exhibit A.

Certificate Regarding Class III status 49 CFR §1150.43(g):

Attached as Exhibit B.

Interchange Commitments 49 CFR §1150.43(h)

None exist. The Line connects with both CSX Transportation and Norfolk
Southern Railway and CKIN interchanges freight with both carriers.

Caption Summary 49 CFR §1150.44

A caption summary in the prescribed form which identifies the existence of
an interchange agreement is attached as Exhibit C.

to agency jurisdiction). HVRM currently provides excursion passenger service over that
trackage and will continue to do so.

Pursuant to 49 CFR §1105.6(c) (2), the proposed transaction is exempt from environmental review because the actions proposed herein will not cause any operating changes that exceed the thresholds established in 49 CFR §1105.7(e) (4) or (5).

In addition, this transaction is exempt from historic review under 49 CFR §1105.8(b) (1). Under this section, a sale, lease or transfer of a rail line is exempt if rail operations will continue. Further Board approval is required to abandon service, and there are no plans to dispose of or alter the properties subject to Board jurisdiction.

Respectfully submitted,



John D. Heffner
Strasburger & Price, LLP
1025 Connecticut Avenue, N.W.
Suite 717
Washington, D.C. 20036
(202) 742-8607

Counsel for Applicant

Dated: October 5, 2017

EXHIBIT A

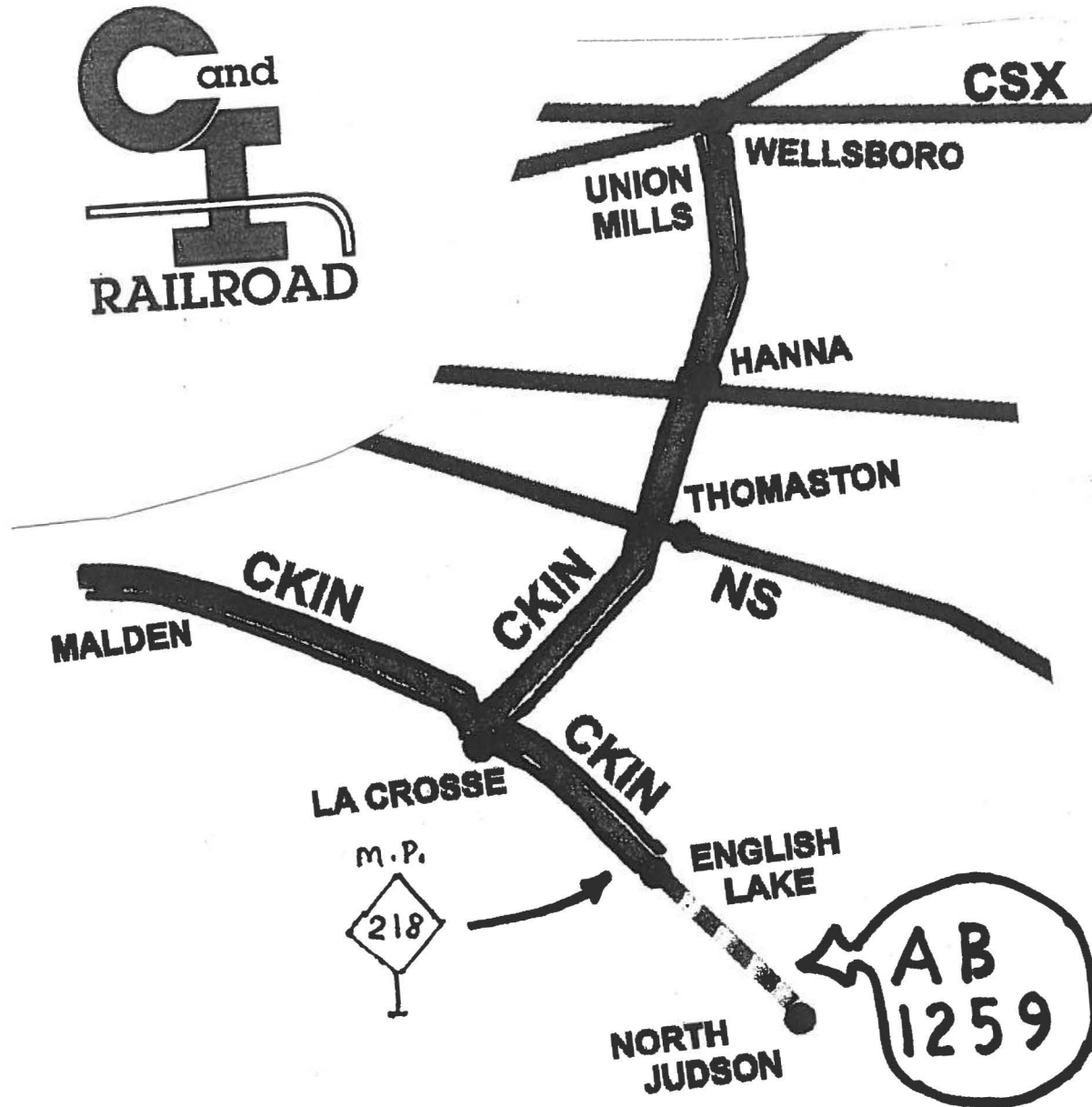


Exhibit B

Certification

I, R. Powell Felix, certify that I am President (state position) of Chesapeake and Indiana RR (name of carrier) and that applicant's projected revenues will not exceed \$5 million annually and will not result in the applicant becoming a Class I or Class II carrier under the provisions of 49 CFR 1201(1-1).

October 2

Dated: ____, 2017

Signature

R. Powell Felix

EXHIBIT C
CAPTION SUMMARY

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CHESAPEAKE AND INDIANA RAILROAD COMPANY
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An original and ten copies of all pleadings referring to FD 36147 must be filed with the Board and served on CCR’s representative: John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Avenue, N.W., Suite 717,

Washington, D.C. 20036, (202) 742-8607. This notice is filed under 49 C.F.R. § 1150.41, *et. seq.* If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed no later than October 29, 2017, at least 7 days before this exemption becomes effective.

Board decisions and notices are available on its website at WWW.STB.GOV

Decided:
By the Board

VERIFICATION

STATE OF INDIANA)

County)
CITY OF FAYETTE)

R. Powell Felix, being duly sworn according to law, hereby deposes and states that (s)he holds the position of President with applicant/petitioner, is authorized to make this Verification, had read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of (her)his knowledge, information, and belief.

R Powell Felix

Subscribed to and sworn to before me, a Notary Public, in and for the County of Fayette in the State of Indiana, this 2nd day of October.

Monica L Struewing
Notary Public

My Commission expires:

