



FR-4915-01-P

## **SURFACE TRANSPORTATION BOARD**

**[Docket No. FD 36349]**

### **The Indiana Rail Road Company—Amended Trackage Rights Exemption—CSX Transportation, Inc.**

The Indiana Rail Road Company (INRD), a Class II rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition of amended, limited overhead trackage rights over a line of railroad of CSX Transportation, Inc. (CSXT), between the connection with INRD at approximately CSXT milepost OZA 204.5 at Sullivan, Ind., and the connection with trackage serving the Oaktown Mine at approximately CSXT milepost OZA 219.05 at Oaktown, Ind., including the connection with trackage serving the Sunrise Mine at approximately CSXT milepost OZA 214.5 at Carlisle, Ind., a total distance of approximately 14.55 miles (the Line).

INRD states that, pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated August 1, 2009, and November 20, 2009, INRD holds trackage rights over the Line for the purpose of handling unit coal trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges.<sup>1</sup> Subsequently, pursuant to a series of temporary trackage rights exemptions, CSXT and INRD agreed to temporarily expand

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<sup>1</sup> See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35328 (STB served Dec. 31, 2009); Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 35287 (STB served Sept. 2, 2009); Ind. Rail Rd.—Amended Trackage Rights Exemption—CSX Transp., Inc., FD 35137 (STB served May 22, 2008).

the existing Sullivan-Oaktown trackage rights to allow INRD to handle unit coal trains to an additional off-line destination.<sup>2</sup>

Pursuant to the written Supplemental Agreement No. 7 dated July 19, 2019, INRD and CSXT have updated their arrangement.<sup>3</sup> The parties have agreed to amend the existing trackage rights to, among other things, make permanent the previously temporary trackage rights (to Kentucky Utilities), clarify other allowable destinations, and delete destinations that have ceased receiving coal.<sup>4</sup> Specifically, according to the verified notice, the purpose of these rights is to permit INRD to handle loaded and empty unit coal trains between the Oaktown Mine or the Sunrise/Carlisle Mine and the following destinations: the Indianapolis Power & Light generating station at Petersburg, Ind.; the Hoosier Energy generating station at Merom, Ind.; Vectren and Alcoa generating stations at Warrick, Ind.; and Kentucky Utilities.<sup>5</sup> INRD states that this proposed trackage rights exemption is intended to subsume and replace INRD's prior trackage rights exemptions granted in Docket Nos. FD 35137, 35287, and 35328.

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<sup>2</sup> The temporary trackage rights to that additional off-line destination, the Kentucky Utilities E.W. Brown generating station in Harrodsburg, Ky. (Kentucky Utilities), are scheduled to expire on December 31, 2019. See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc., FD 36068 (STB served Oct. 14, 2016); Ind. Rail Rd.—Temporary Trackage Rights Exemption—CSX Transp., Inc., FD 36068 (Sub-No. 2) (STB served Feb. 8, 2019).

<sup>3</sup> A redacted copy of the agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

<sup>4</sup> To the extent INRD seeks to discontinue its trackage rights to any previously authorized destination, it must separately seek appropriate relief under 49 U.S.C. 10903 or explain why such authority is unnecessary.

<sup>5</sup> The parties also have agreed to modify contractual provisions regarding compensation and contemplated volumes of traffic.

The transaction may be consummated on or after December 18, 2019, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

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 effectiveness of the exemption. Petitions for stay must be filed no later than December 11, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36349, must be filed with the Surface Transportation Board, either via e-filing or in writing addressed to 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on INRD's representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: November 26, 2019.

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

**Jeffrey Herzig,**

*Clearance Clerk.*

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