

21295

LAW OFFICES

JOHN H. BROADLEY & ASSOCIATES, P.C.

CANAL SQUARE
1054 THIRTY-FIRST STREET, N.W.
WASHINGTON, D.C.
20007

(202) 333-6025
(202) 333-5685 FAX

INTERNET
JBROADLEY@ALUM.MIT.EDU

October 21, 2004

JOHN H. BROADLEY



Honorable Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, D.C. 20423

Re: Finance Docket No. 34531, The Indiana Rail Road Company -- Acquisition and Operate Exemption -- Lines of Monon Rail Preservation Corporation in Monroe County, Indiana

Dear Mr. Williams:

Enclosed for filing in the captioned proceeding is an original and eleven copies of the PETITION OF THE INDIANA RAIL ROAD COMPANY FOR WAIVER OF THE EMPLOYEE NOTICE REQUIREMENT OF 49 CFR 1150.45(a). Please file stamp the extra copy and return it with our messenger.

I have also enclosed a check in the amount of \$1400.00 as a filing fee for the Notice of Exemption that INRD intends to file in this proceeding. In accordance with the Board's regulations, the Notice of Exemption will not be filed until 14 days after the Notice of Intent is served on the persons listed in 49 CFR 1150.45(c). However, because we are asking the Board to grant a waiver of the employee notice requirements of 49 CFR 1150.45, we have elected to pay the filing fee immediately to avoid any delay in processing the waiver request.

Should you have any questions concerning this matter, please do not hesitate to call me at the above number.

ENTERED
Office of Proceedings

OCT 21 2004

Part of
Public Record

Yours very truly,

John Broadley

John Broadley

Enclosures **FEE RECEIVED**

OCT 21 2004

SURFACE
TRANSPORTATION BOARD

FILED

OCT 21 2004

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings

OCT 21 2004

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.



The Indiana Rail Road Company -- Acquisition
Exemption -- Line of Monon Rail Preservation
Corporation in Monroe County, IN.

Finance Docket No. 34531

RECEIVED

OCT 21 2004

FILED

OCT 21 2004

PETITION OF THE INDIANA RAIL ROAD
COMPANY FOR WAIVER OF THE EMPLOYEE
NOTICE REQUIREMENTS OF 49 CFR 1150.45(a)

SURFACE
TRANSPORTATION BOARD

BACKGROUND

The Indiana Rail Road Company ("INRD") has entered into an agreement in principle with Monon Rail Preservation Corporation ("Monon") to acquire Monon's line in Monroe County, IN between mileposts Q217.67 (Hunters, IN) and Q213.69 (Ellettsville, IN) (the "Line"). INRD intends to file a notice of exemption to acquire the Line pursuant to 49 CFR 1150.45. In compliance with the requirements of 49 CFR 1150.45, INRD today served a copy of its notice of intent on the persons listed in 49 CFR 1150.45(c). A copy of that notice of intent is attached hereto.

WAIVER REQUESTED

INRD hereby petitions the Board for a waiver of the employee notice requirements of 49 CFR 1150.45(a) in connection with its acquisition of the Line. INRD requests the waiver because there has been no request for service on the Line during the past 24 months, and no service has been provided. Moreover, INRD is the current operator of the Line, and there are no employees of Monon, INRD, or of any other carrier working on the Line.

Transfer of the Line to INRD ownership will have no impact on any employees of INRD, Monon, or any other carrier.

Monon acquired the Line from CSXT in 1998, a transaction that the Board exempted in *Monon Rail Preservation Corporation -- Acquisition Exemption -- Lines of CSX Transportation, Inc., in Monroe County, IN*, STB Finance Docket No. 33668 (STB served Oct. 16, 1998).¹ In 2001 INRD entered into an operating agreement with Monon whereby INRD became the operator of the Line. *See The Indiana Rail Road Company -- Operation Exemption - Monon Rail Preservation Corporation*, STB Finance Docket No. 33670 (STB served Feb. 21, 2001).

49 CFR 1150.45(a) requires that an applicant must comply with the employee notice requirements of 49 CFR 1150.42(e). That section provides, in part:

. . . [A]pplicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected lines(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

As there is no business on the Line today and there has been none for the past 24 months, and as there are no employees of either Monon or INRD (or any other carrier) who are employed on the Line, posting notice as required by 49 CFR 1150.42(e) would be a futile act

¹ As acquired by Monon, the Line extended to milepost 213.41 at Ellettsville, IN. The segment of the Line between mileposts 213.69 and 213.41 was abandoned in 2001. *See Monon Rail Preservation Corporation -- Abandonment Exemption -- in Monroe County, IN*, STB Docket No. AB-589X (STB served Dec. 7, 2001).

providing notice to no one.² In the event that INRD develops business on the Line after its acquisition, that business will be served by current INRD employees, the same employees who would serve the Line if there were any business on it today.

CONCLUSION

For the foregoing reasons, INRD respectfully requests that the Board waive the requirement of 49 CFR 1150.45(a) that INRD comply with the notice requirement of 49 CFR 1150.42(e) in connection with its acquisition of the Line.

Respectfully submitted,

THE INDIANA RAIL ROAD COMPANY

By: John Broadley
One of its attorneys

John Broadley
DC Bar No. 238089
JOHN H. BROADLEY & ASSOCIATES, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 202-333-5685

Dated: October 21, 2004

² The only business on the Line (Wickes Lumber at Ellettsville) can no longer be served by rail over the Line in view of the 2001 abandonment of the 1500 foot segment of the Line between mileposts Q213.41 and Q 213.69 at Ellettsville exempted by the Board in STB Docket No. AB-589X, *supra*.

(c) A statement that an agreement has been reached or details when an agreement will be reached:

A purchase and sale agreement has been reached between INRD and Monon in principle. The parties expect to sign a definitive purchase and sale agreement in sufficient time for a closing to occur by November 30, 2004.

(d) The operator of the property:

INRD will operate the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property to the Class III rail carrier.

Monon Rail Preservation Corporation.
401 N. Morton Street
Bloomington, IN 47404

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

The parties contemplate consummating the transaction on or about November 30, 2004.

(3) The mileposts of the subject property including any branch lines:

The subject property is a line of railroad running between MP Q217.67 at Hunters, IN and MP Q213.69 at Ellettsville, IN.

(4) The total route miles being acquired:

The line of railroad INRD will acquire under the lease comprises 3.98 miles.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states:

The required map is attached as Exhibit No. 1.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under 1150.45:

This notice is being processed under 49 CFR 1150.45.

Simultaneous with this Notice of Intent, INRD is filing a petition for waiver of the notice requirement of 49 CFR 1150.42(e) because there are no Monon employees working on the line to be acquired.

1150.45(b)(1) A general statement of service intentions.

INRD is considering construction of a spur track from the Line to be acquired to permit rail service to the Rogers Quarry which is adjacent to the Line. If the spur track is built, INRD expects to provide daily service to Rogers. There is no existing shipper located on the Line.

1150.45(b)(2) A general statement of labor impacts.

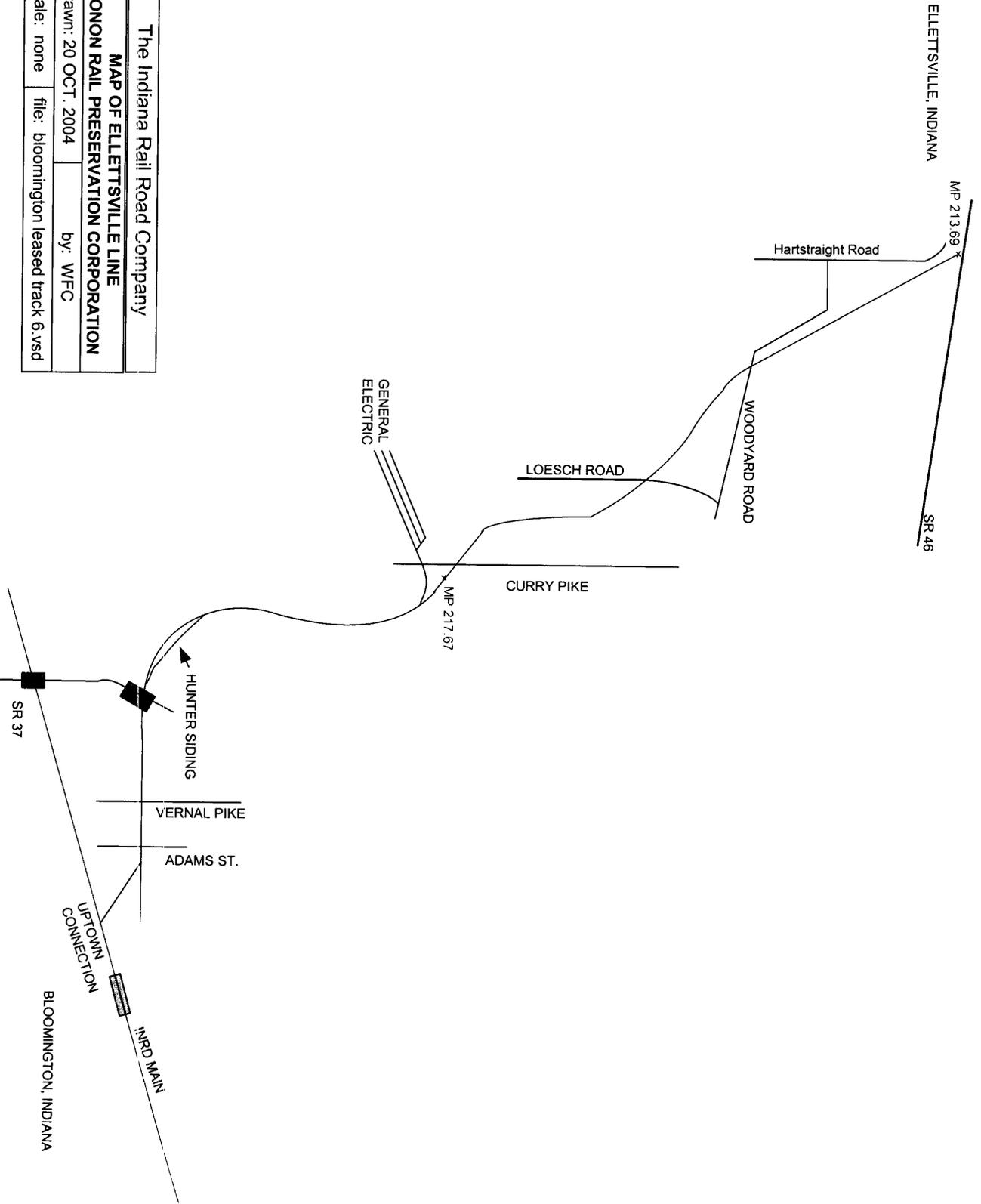
There will be no labor impacts from INRD's acquisition of the Line. In the event a spur track is built in to the Rogers Quarry, INRD proposes to staff trains that facility with its existing forces.

THE INDIANA RAIL ROAD COMPANY

By: John Broadley
One of its attorneys
John Broadley
(DC Bar No. 238089)
JOHN H. BROADLEY & ASSOCIATES
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 202-333-5685

Dated: October 21, 2004

Exhibit No. 1



The Indiana Rail Road Company	
MAP OF ELLETTSVILLE LINE	
MONON RAIL PRESERVATION CORPORATION	
drawn: 20 OCT. 2004	by: WFC
scale: none	file: bloomington leased track 6.vsd