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SERVICE DATE – JANUARY 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34783

THE INDIANA RAIL ROAD COMPANY – ACQUISITION – SOO LINE RAILROAD
COMPANY

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 2 in STB Finance Docket No. 34783; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed December 15, 2005, by The Indiana Rail Road Company (INRD) and Soo Line Railroad Company (Soo). The application seeks Board approval under 49 U.S.C. 11323-26 for INRD's acquisition of (a) Soo's Latta Subdivision, a 92.3-mile railroad line extending from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, (b) certain overhead trackage rights currently held by Soo between Chicago, IL, and Terre Haute, IN, and between Bedford, IN, and Louisville, KY, and (c) certain ancillary trackage rights. This proposal is referred to as the Transaction, and INRD and Soo are referred to collectively as applicants.

The Board finds that the Transaction is a "minor transaction" under 49 CFR 1180.2(c), and the Board adopts a procedural schedule for consideration of the primary application and the related filings, under which the Board's final decision would be issued on April 24, 2006.

DATES: The effective date of this decision is **January 13, 2006**. Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than **January 27, 2006**, a notice of intent to participate. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT), must be filed by **February 21, 2006**. Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or either of the related filings must be filed by **March 8, 2006**. If a public hearing or oral argument is held, it will be held **the week of March 20, 2006**. The Board will issue its final decision on **April 24, 2006**.¹ For further information respecting dates, see Appendix A (Procedural Schedule).

¹ Under 49 U.S.C. 11325(d)(2), the Board must conclude any evidentiary proceedings by the 105th day after the publication of the notice and must issue a final decision by the 45th day after conclusion of the evidentiary proceeding. While the Board will attempt to meet the

ADDRESSES: Any filing submitted in this proceeding must be submitted **either** via the Board's e-filing format **or** in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John Broadley (representing INRD), John H. Broadley & Associates, P.C., 1054 31st Street, N.W., Suite 200, Washington, DC 20007; (4) Terence M. Hynes (representing Soo), Sidley Austin Brown & Wood, 1501 K Street, N.W., Washington, DC 20005; and (5) any other person designated as a POR on the service list notice (as explained below, the service list notice will be issued as soon after January 27, 2006, as practicable).

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565-1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Soo, a Class I railroad,² is a Minnesota Corporation that operates approximately 3,500 miles of track in the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. Soo is a wholly owned subsidiary of Canadian Pacific Railway Company (CPRC).³ CPRC is a Canadian corporation whose stock is publicly held and traded on the New York and Toronto stock exchanges. Soo acquired its Chicago-Louisville line on February 20, 1985, as part of its purchase of the core rail

applicants' accelerated schedule, the Board will take the full statutory time allotted to issue a final decision if necessary.

² The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of \$250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than \$20 million but less than \$250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of \$20 million or less (in 1991 dollars). See 49 CFR Part 1201, General Instruction 1-1(a).

³ Soo, its parent, CPRC, and its affiliate, Delaware and Hudson Railway Company, Inc., collectively do business under the name "Canadian Pacific Railway."

system of the bankrupt Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee).⁴

INRD currently owns and operates a line of railroad running between Indianapolis, IN, and Newton, IL, a total distance of 155 miles. This line intersects Soo's Chicago-Louisville line at Linton, IN. INRD was formed in 1986 and has built its traffic base from approximately 12,000 carloads in its first full year of operation, to 105,810 carloads in 2004. INRD's revenues are generated primarily (i) from coal moves to Indianapolis Power & Light's (IP&L) Harding Street power plant at Indianapolis, IN, to Ameren's power plant at Lis, IL, and to Hoosier Energy's power plant at Merom, IN, and (ii) from chemical, plastics, and petroleum feedstock movements to and from plants in Robinson, IL. INRD reports that, by the end of 2005, its revenues will have exceeded the threshold for Class II carrier status for 3 consecutive years; accordingly, in January 2006, INRD will be reclassified as a Class II carrier under the Board's regulations.

CSX Transportation, Inc. (CSXT) currently owns 85% of the common stock of Midland United,⁵ which in turn owns 100% of the common stock of INRD. Thomas G. Hoback, president of INRD and of Midland United, owns the remaining 15% of Midland United's common stock. The applicants submit that, at the time CSXT acquired control of INRD, it was contemplated that INRD would remain a separate short line or regional railroad and would not be functionally integrated into CSXT. The applicants state that this approach has been followed, and INRD retains its separate engineering, operating, mechanical, marketing, accounting and labor relations functions.

The Transaction for which the applicants seek approval consists of INRD's: (a) purchase of Soo's Latta Subdivision; (b) acquisition by assignment of all of Soo's right, title and interest in and to the Main Line Trackage Rights; and (c) acquisition by assignment of all of Soo's right, title and interest in and to the Ancillary Trackage Rights. Collectively, the Latta Subdivision, the Main Line Trackage Rights, and the Ancillary Trackage Rights are referred to herein as the Acquired Lines.

The Latta Subdivision. The Latta Subdivision extends from milepost 170.1 at Fayette, IN, to milepost 262.4 at Bedford, IN, a distance of 92.3 miles. The Latta Subdivision includes the Latta Branch, which runs westerly from the main line of the Latta Subdivision for approximately 8.5 miles, commencing at approximately milepost 204.3 on the Latta Subdivision.

⁴ See Milwaukee—Reorganization—Acquisition by GTC, 2 I.C.C.2d 161 (1984); Milwaukee-Reorganization—Acquisition by GTC, 2 I.C.C.2d 427 (1985); aff'd sub nom. In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad, Debtor, 799 F.2d 317 (7th Cir. 1986).

⁵ See CSX Corporation and CSX Transportation, Inc.—Control—The Indiana Rail Road Company, STB Finance Docket No. 32892 (STB served Nov. 7, 1996).

The Latta Subdivision also includes Soo's Latta Yard and the shop facilities located there, as well as various side tracks, spur tracks, connections and other related rail properties.

The Main Line Trackage Rights. The Main Line Trackage Rights to be assigned to INRD consist of the following:

- (i) Overhead trackage to operate over and use certain trackage of Union Pacific Railroad Company (UP) between 80th Street, Chicago, and Dolton Junction, IL, on terms established pursuant to the trackage rights agreement between Soo and Missouri Pacific Railroad Company, dated August 23, 1995, as amended, a distance of 8.32 miles. The trackage rights are assignable with the consent of UP, which should not be unreasonably withheld;
- (ii) Overhead trackage rights to operate over and use certain trackage of CSXT and UP from Dolton Junction, IL, to Woodland Junction, IN, on terms established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 65.7 miles.⁶ The trackage rights are assignable with the consent of CSXT;
- (iii) Overhead trackage rights to operate over and use certain trackage of CSXT from Woodland Junction, IN, to Terre Haute, IN, as established by the agreement between Soo and CSXT, dated November 23, 1988, as amended, a distance of 99.6 miles. The trackage rights are assignable with the consent of CSXT;
- (iv) Overhead trackage rights to operate over and use certain trackage of CSXT from Bedford, IN, to New Albany, IN, on terms established by the agreement between Louisville & Nashville Railroad Company (L&N) and Milwaukee, dated July 17, 1973, as amended, a distance of 71.77 miles. The trackage rights are assignable with the consent of CSXT; and
- (v) Rights to use the property of the former Kentucky & Indiana Terminal Company (K&ITC) between New Albany, IN, and Louisville, KY, and within Louisville, KY, on terms originally set forth in the agreement dated March 1, 1973, by and among K&ITC, the Baltimore & Ohio Railroad Company, L&N, Southern Railway Company and Milwaukee. Soo's rights under the Louisville Terminal Agreement are assignable without the approval of Norfolk Southern Railway Company (successor to Southern).

The Ancillary Trackage Rights. The Ancillary Trackage Rights to be assigned to INRD are as follows:

- (i) Overhead trackage rights to operate over and use certain trackage rights of Indiana Southern Railroad (ISRR) from Elnora, IN, to Maysville, IN, on terms established by the agreement governing Soo's grant of trackage rights to ISRR,

⁶ CSXT and UP jointly own the Dolton Junction to Woodland Junction line. Each has the right unilaterally to grant trackage rights over the line.

- dated April 15, 1993, a distance of 19.6 miles. The agreement is assignable without ISRR's consent in connection with a sale of all or substantially all of Soo's interest in its line between Terre Haute and Bedford;
- (ii) Overhead trackage rights to operate over and use certain trackage of ISRR from Beehunter, IN, to Sandborn, IN, on terms established by the agreement between Consolidated Rail Corporation (Conrail) and Milwaukee, dated June 28, 1985, as amended, a distance of 6.12 miles. ISRR's consent is required for the assignment of the trackage rights except in connection with the sale or assignment of all or substantially all of Soo's properties; and
 - (iii) The option to acquire trackage rights under specified conditions on ISRR's line between Elnora, IN, and Evansville, IN, on terms established by the agreement between Soo and ISRR, dated April 15, 1993, whereby Soo obtained the option to acquire such trackage rights in exchange for ISRR's receipt of trackage rights over Soo's line between Beehunter, IN, and Elnora, IN.

The applicants are in the process of obtaining consents for the assignments where required and anticipate receiving them prior to the closing of the Transaction.

In addition, INRD and Soo have entered into three agreements dealing with their future relationship: (1) the "Power Run Through Agreement," which establishes terms under which CPRC will supply run-through power for potash trains originating on CPRC and destined for Jeffersonville, IN, and the terms under which INRD will supply run-through power for petroleum coke trains originating in Rosemount, MN, and destined for the gasification facility at Fayette, IN; (2) the "Interchange Agreement," which establishes terms under which CPRC and INRD will interchange traffic at Chicago; and (3) the "Marketing and Divisions Agreement," which establishes divisions and other commercial arrangements between INRD and CPRC.

Financial Arrangements. INRD advises that it does not plan on any new financial arrangements in connection with the Transaction. No new securities will be issued. INRD will finance the Transaction with bank loans.

Passenger Service Impacts. The Transaction would have no impact on commuter or passenger operations because the Acquired Lines have no commuter or other passenger service.

Discontinuances/Abandonments. INRD does not contemplate any discontinuances or abandonments as a result of the Transaction.

Public Interest Considerations. Applicants assert that, if approved, the Transaction would promote inter- and intramodal competition and would not result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

Specifically, applicants assert that the Transaction would produce significant operating efficiencies and service improvements. Currently, INRD and Soo's lines intersect at Linton, IN. Under an interchange agreement, Soo currently interchanges a substantial amount of coal traffic originating on the Latta Subdivision with INRD. Combining the Acquired Lines with INRD's existing system would allow for greater operating efficiencies than those made possible by the current INRD-Soo interchange agreement.

INRD states that it would be able to operate more efficiently on the Acquired Lines and on its existing lines by making Soo's Latta Yard, which is located close to the geographic center of the Acquired Lines and INRD's existing system, the central hub of the combined system. INRD's operating plan contemplates that trains would operate between Latta Yard, on one hand, and Indianapolis, IN, Louisville, KY, Palestine, IL, and Terre Haute, IN, on the other hand. Blocks of cars would be swapped between trains at Latta Yard into a simple hub and spoke approach. This approach, INRD believes, would improve the utilization of INRD train crews and locomotives, by eliminating unnecessary dead head miles and reducing locomotive idle time. The applicants further note that the Transaction would generate efficiencies by enabling INRD to consolidate all of its locomotive repair work and some of its car repair activities at the locomotive shop and car repair facility at Latta Yard. Lastly, INRD plans to consolidate the dispatching of its entire system at Terre Haute, as well as its customer service functions.

Applicants submit that the Transaction would improve the level of service to local shippers on the Acquired Lines by reducing transit time, increasing local service, and providing an additional intermodal service facility, in addition to service improvements on traffic that is now interchanged between Soo and INRD, as INRD assumes full control of the moves.

Applicants further note that the Transaction would allow for an improved marketing focus, which would attract additional traffic. As the Acquired Lines' original function as a bridge for traffic moving between the Chicago gateway and points in the Southeast has been rendered obsolete by industry consolidation, the Acquired Lines must now rely upon traffic originating or terminating at local points on those lines. INRD's marketing experience in, and proximity to, central and southern Indiana would permit it to develop closer relationships with local shippers. In addition, the proximity of the Acquired Lines to INRD's existing line would enable INRD to be more responsive to the equipment requirements of local shippers.

Applicants submit that the Transaction would not result in a substantial lessening of competition for overhead traffic between Chicago and the Southeast. Applicants stress that rail consolidations have rendered Soo's Chicago-Louisville line competitively irrelevant as an overhead route. Thus, INRD's acquisition of the Acquired Lines would have no material competitive impact on overhead traffic between Chicago and the Southeast.

The applicants further assert that there would be no lessening of competition for traffic originating and/or terminating on the Acquired Lines. This applies to the shipment of on-line coal, off-line coal, received petroleum coke, plastics, and potash. The applicants state that no

shipper would be left without competitive options as a result of the Transaction, and INRD would not acquire any market power through its purchase of the Acquired Lines.

Lastly, INRD believes that its acquisition of the Acquired Lines would provide it with more opportunities to compete effectively with motor carriers than is the case today, and to divert traffic from truck to rail.

Time Schedule For Consummation. If the Board approves the Transaction, applicants intend to consummate the transaction on May 25, 2006, or as soon thereafter as permitted by the Board.

Environmental Impacts. Applicants contend that no environmental documentation is required because there would be no operational changes that would exceed the thresholds established in 49 CFR 1105.7(e)(4) or (5) and there would be no action that would normally require environmental documentation. Applicants therefore assert that the Transaction does not require environmental documentation under 49 CFR 1105.6(b)(4).

Historic Preservation Impacts. Applicants contend that a historic report is not required because INRD would operate the Acquired Lines and would require further Board approval to discontinue service or abandon any service. According to applicants, there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Applicants therefore assert that a historic report under 49 CFR 1105.8(b)(1) is not required.

Labor Impacts. Soo states that no Soo employee currently working on the Acquired Lines would lose the opportunity for continued employment on Soo as a result of the Transaction. As of December 1, 2005, Soo employed 77 persons on the Acquired Lines. Upon conveyance of the Acquired Lines to INRD, Soo would no longer operate over those lines and would therefore abolish all jobs on the Acquired Lines. All Soo agreement employees on the Acquired Lines have seniority under their collective bargaining agreements that would entitle them to hold positions at other locations in Soo's core territory. In addition, Soo notes that INRD would need experienced railroad employees to operate the Acquired Lines and would accept applications for employment from Soo's current employees. Soo employees who are not offered employment by INRD, or who decline INRD offers of employment, could elect to exercise their existing Soo seniority to take jobs in their crafts elsewhere on Soo. The one management employee on the Acquired Lines would be relocated.

INRD expects to be able to handle the combined operation of the Acquired Lines and its existing line with 41 additional employees. INRD plans to hire the additional 41 people needed to operate the Acquired Lines by taking applications and hiring on the basis of those applications. Applications from current Soo employees who work on the Acquired Lines would be treated on an equal basis with all others received. INRD has entered preliminary discussions with the Brotherhood of the Locomotive Engineers and Trainmen (BLET), representing INRD's train and engine personnel, regarding the terms of an implementing agreement, covering the

extent to which former Soo employees hired by INRD are given credit for their prior employment within INRD's seniority system. INRD expects to be able to reach a consensual implementing agreement with BLET, and would notify the Board when such agreement has been reached.

INRD expects to change the reporting point for many of its train and engine personnel from Switz City to Latta Yard. INRD also expects to relocate six mechanical positions from Switz City to Latta Yard. While six mechanical positions would be relocated, only three employees would actually be affected. One of the positions is currently vacant and, if it is filled before the move, the person filling it would be aware that it would be moved to Latta after consummation of the Transaction. Two other positions are filled by employees who are moving to new types of positions, not mechanical work. INRD would also relocate five dispatchers from Indianapolis, IN, to Terre Haute, IN, when it consolidates dispatching of the combined operation at that location. INRD also would move some car repair activities from Indianapolis and Palestine to Latta Yard. INRD's car repair work is performed by outside contractors so no INRD employees would be affected by this move.

Protective Conditions. For the Transaction, applicants assert that, to provide the level of labor protection mandated by 49 U.S.C. 11326, the Board should impose the labor protective conditions in New York Dock Ry. – Control – Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979), as clarified in Wilmington Term. RR, Inc. – Pur. & Lease – CSX Transp., Inc., 6 I.C.C.2d 799, 814-826 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). Some of the Soo employees who may be affected would be entitled to elect, alternatively, to receive benefits under provisions of existing employee protective agreements that are in effect on Soo.

APPLICATION ACCEPTED. The Board finds that the proposed Transaction would be a "minor transaction" under 49 CFR 1180.2(c), and the Board is accepting the application for consideration because it is in substantial compliance with the applicable regulations governing minor transactions. See 49 U.S.C. 11321-26; 49 CFR part 1180. The Board reserves the right to require the filing of supplemental information, if necessary to complete the record.

PUBLIC INSPECTION. The application is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. In addition, the application may be obtained from Mr. Hynes (representing Soo) and Mr. Broadley (representing INRD) at the addresses indicated above.

PROCEDURAL SCHEDULE. The Board has considered applicants' INRD-3/SOO-3 request (filed December 15, 2005) for a procedural schedule, under which the Board would issue its final decision on April 24, 2006, and that decision would become effective on May 24, 2006.

The Board is adopting a procedural schedule that is essentially the same as applicants' proposed procedural schedule. However, whereas applicants' schedule provides that an oral

argument will be held, if necessary, on March 22, 2006, to allow greater flexibility in the handling of the Board's docket, the Board's schedule provides that any necessary oral argument or public hearing will be held the week of March 20, 2006. Further, although applicants' schedule provides the notice of acceptance of application to be published in the Federal Register on January 17, 2006, the Board's schedule provides for publication on January 13, 2006, to make the schedule consistent with the Board's normal operating procedure.

Under the procedural schedule adopted by the Board: any person who wishes to participate in this proceeding as a POR must file, no later than **January 27, 2006**, a notice of intent to participate; all comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by DOJ and DOT, must be filed by **February 21, 2006**; and responses to comments, protests, requests for conditions, and other opposition and rebuttal in support of the primary application or either of the related filings must be filed by **March 8, 2006**. As in past proceedings, DOJ and DOT will be allowed to file, on the response due date (here, **March 8**), their comments in response to the comments of other parties, and applicants will be allowed to file (as quickly as possible thereafter) a response to any such comments of DOJ and/or DOT. Under this schedule, a public hearing or oral argument may be held **the week of March 20, 2006**. The Board will issue its final decision on **April 24, 2006**, and the Board will make any such approval effective on **May 24, 2006**. For further information respecting dates, see Appendix A (Procedural Schedule).

NOTICE OF INTENT TO PARTICIPATE. Any person who wishes to participate in this proceeding as a POR must file with the Board, no later than **January 27, 2006**, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of the United States Department of Transportation, the Attorney General of the United States, Mr. Hynes (as representative of Soo), and Mr. Bradley (as representative of INRD).

SERVICE LIST NOTICE. The Board will serve, as soon after January 27, 2006, as practicable, a notice containing the official service list (the service-list notice). Each POR will be required to serve upon all other PORs, within 10 days of the service date of the service-list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each POR also will be required to file with the Board, within 10 days of the service date of the service-list notice, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a POR after the service date of the service-list notice must have its own certificate of service indicating that all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a POR.

COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION EVIDENCE AND ARGUMENT, INCLUDING FILINGS BY DOJ AND DOT. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings, including filings by DOJ and DOT, must be filed by **February 21, 2006**.

Because the Transaction proposed in the application is a minor transaction, no responsive applications will be permitted. See 49 CFR 1180.4(d)(1).

Protesting parties are advised that, if they seek either the denial of the application or the imposition of conditions upon any approval thereof, on the theory that approval (or approval without conditions) would harm competition and/or their ability to provide essential services, they must present substantial evidence in support of their positions. See Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295 (D.C. Cir. 1983).

RESPONSES TO COMMENTS, PROTESTS, REQUESTS FOR CONDITIONS, AND OTHER OPPOSITION; REBUTTAL IN SUPPORT OF THE APPLICATION. Responses to comments, protests, requests for conditions, and other opposition submissions, and rebuttal in support of the primary application or either of the related filings, must be filed by **March 8, 2006**.

PUBLIC HEARING/ORAL ARGUMENT. The Board may hold a public hearing or an oral argument in this proceeding **the week of March 20, 2006**.

DISCOVERY. Discovery may begin immediately. The parties are encouraged to resolve all discovery matters expeditiously and amicably.

ENVIRONMENTAL MATTERS. Under the Council on Environmental Quality (CEQ) regulations, for those types of proposed actions for which the environmental effects are ordinarily insignificant, an environmental review need not be conducted under the National Environmental Policy Act of 1969 (NEPA).⁷ Rather, such activities are covered by a “categorical exclusion.” In its environmental rules, the Board has various categorical exclusions.⁸ As pertinent here, where portions of the Acquired Lines are located in an air quality “nonattainment” area, a rail line acquisition proposal that would not result in operational changes that exceed certain thresholds—generally an increase in rail traffic of at least three trains a day or 50% in traffic (measured in gross ton miles annually)—normally requires no environmental review. 49 CFR 1105.6(c)(2)(i).

⁷ 40 CFR 1500.4(p), 1501.4(a)(2), 1508.4.

⁸ 49 CFR 1105.6(c).

Applicants state that the traffic increases they project to occur, should this proposal be approved, consist of increasing local service to and from Louisville, KY, from 3 days per week to 5 days per week. Applicants maintain that the contemplated changes would improve service to shippers and would create operational efficiencies.

While INRD believes that these efficiencies would eventually attract additional rail traffic, including diversion from trucks, applicants state that the potential traffic increases would not result in any changes in operations that exceed the Board's thresholds for environmental documentation established in the Board's environmental rules at 49 CFR 1105.7(e)(5)(ii), and there is nothing in the application to indicate that the transaction has any potential for significant environmental impacts. The Board's Section of Environmental Analysis (SEA) therefore has concluded that formal environmental review is not warranted in this case, and that this proceeding is "categorically excluded" from environmental review under NEPA.

Finally, SEA agrees with applicants that the proposed action does not require historic review under the National Historic Preservation Act of 1966 because further approval would be required to abandon any service, and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. 49 CFR 1105.8(b)(1).

FILING/SERVICE REQUIREMENTS. Persons participating in this proceeding may "file" with the Board and "serve" on other parties: a notice of intent to participate (due by **January 27**); a certificate of service indicating service of prior pleadings on persons designated as PORs on the service-list notice (due by the 10th day after the service date of the service-list notice); any comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application or either of the related filings (due by **February 21**); and any responses to comments, etc., and any rebuttal in support of the primary application or either of the related filings (due by **March 8**).

Filing Requirements. Any document filed in this proceeding must be filed **either** via the Board's e-filing format **or** in the traditional paper format. Any person e-filing a document should comply with the instructions found on the Board's website at "www.stb.dot.gov" at the "E-FILING" link. Any person filing a document in the traditional paper format should send an original and 10 paper copies of the document (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

Service Requirements. One copy of each document filed in this proceeding must be sent to each of the following (any copy may be sent by e-mail only if service by e-mail is acceptable to the recipient): (1) Secretary of the United States Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) John Broadley (representing INRD), John H. Broadley & Associates, P.C., 1054 31st Street, N.W., Suite 200, Washington, DC 20007; (4) Terence M. Hynes (representing Soo),

Sidley Austin Brown & Wood, 1501 K Street, N.W., Washington, DC 20005; and (5) any other person designated as a POR on the service-list notice.

SERVICE OF DECISIONS, ORDERS, AND NOTICES. The Board will serve copies of its decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged either to secure copies of decisions, orders, and notices via the Board’s website at “www.stb.dot.gov” under “E-LIBRARY/Decisions & Notices” or to make advance arrangements with the Board’s copy contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: asapdc@verizon.net; telephone number: 202-306-4004), to receive copies of decisions, orders, and notices served in this proceeding. ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

ACCESS TO FILINGS. An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Under the Board’s rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The public version of the primary application and other filings in this proceeding will also be available on the Board’s website at “www.stb.dot.gov” under “E-LIBRARY/Filings.”

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in STB Finance Docket No. 34783 is accepted for consideration.
2. The parties to this proceeding must comply with the Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
3. The parties to this proceeding must comply with the procedural requirements described in this decision.

4. This decision is effective on January 13, 2006.

Decided: January 9, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary

APPENDIX A: PROCEDURAL SCHEDULE

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|------------------------|--|
| December 15, 2005 | Application, motion for protective order, and request for issuance of procedural schedule filed. |
| December 22, 2005 | Protective order issued. |
| January 13, 2006 | Board notice of acceptance of application published in the <u>Federal Register</u> . |
| January 27, 2006 | Notices of intent to participate in this proceeding due. |
| February 21, 2006 | All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application and/or either or both of the related filings, including filings of DOJ and DOT, due. |
| March 8, 2006 | Responses to comments, protests, requests for conditions, and other opposition due. Rebuttal in support of the primary application and/or either or both of the related filings due. |
| Week of March 20, 2006 | A public hearing or oral argument may be held. |
| April 24, 2006 | Date of service of final decision. |
| May 24, 2006 | Effective date of final decision. |