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ENTERED
Office of Proceedings
February 20, 2024
Part of
Public Record

February 20, 2024

Via E-Filing

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. 36760, Gulf & Atlantic Railways, LLC—Intra-Corporate Family Transaction Exemption—Chesapeake and Indiana Railroad Company, LLC and Northern Indiana Railroad Company, LLC

Dear Ms. Brown:

Enclosed for filing in the above-referenced proceeding is a Verified Notice of Exemption for an intra-corporate family transaction pursuant to 49 U.S.C. § 11323(a) and 49 C.F.R. § 1180.2(d)(3).

The filing fee for the Verified Notice of Exemption was paid using Pay.gov.

Please contact me with any questions.

Respectfully submitted,

/s/ Terence M. Hynes

Terence M. Hynes

Attorney for Gulf & Atlantic Railways, LLC

Enclosure

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

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February 20, 2024
Surface
Transportation Board

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February 20, 2024
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36760

**GULF & ATLANTIC RAILWAYS, LLC
—INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION—
CHESAPEAKE AND INDIANA RAILROAD COMPANY, LLC AND
NORTHERN INDIANA RAILROAD COMPANY, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

**Terence M. Hynes
Stephen S. Laudone
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Attorneys for Gulf & Atlantic Railways, LLC

Dated February 20, 2024

Filing Contains Color Images

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36760

**GULF & ATLANTIC RAILWAYS, LLC
—INTRA-CORPORATE FAMILY TRANSACTION EXEMPTION—
CHESAPEAKE AND INDIANA RAILROAD COMPANY, LLC AND
NORTHERN INDIANA RAILROAD COMPANY, LLC**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)**

Gulf & Atlantic Railways, LLC (“G&A”)¹ submits this Verified Notice of Exemption (“Verified Notice”) pursuant to 49 C.F.R. § 1180.2(d)(3), for the benefit of Chesapeake and Indiana Railroad Company, LLC (“CKIN”) and Northern Indiana Railroad Company, LLC (“NIRC”), both existing Class III railroads, seeking authority to engage in an intra-corporate family transaction pursuant to which CKIN and NIRC will merge, with CKIN the surviving carrier (the “Transaction”). CKIN and NIRC are both controlled directly by G&A and indirectly by Macquarie Infrastructure Partners V GP, LLC (“MIP GP”), a Macquarie Infrastructure Partners V fund vehicle (“MIP V”), and MIP V Rail, LLC (“MIP Rail”).²

¹ G&A was formerly known as RailUSA, LLC.

² See *Macquarie Infra. Partners V GP, LLC, et al.—Control Exemption—Camp Chase Rail, LLC, Chesapeake and Ind. R.R., and Vermilion Valley R.R.*, Docket No. FD 36685 (STB served Apr. 7, 2023); *Macquarie Infra. Partners V GP, LLC, et al.—Control Exemption—N. Ind. R.R.*, Docket No. FD 36729 (STB served Dec. 22, 2023).

NIRC owns 32.97 miles of rail line in Indiana,³ but has never conducted freight rail operations on the line. NIRC has no rail employees and does not own or lease any rolling stock. CKIN currently leases and operates 27.52 miles of NIRC's rail line between milepost CF 0.63, at or near Lacrosse, Ind., and milepost CF 15.23, at or near Wellsboro, Ind., and between milepost CI 218.0, at or near English Lake, Ind., and milepost CI 230.92, at or near Malden, Ind., in LaPorte, Porter, and Starke Counties, Ind.⁴ CKIN discontinued service over the remaining 5.45-mile segment of NIRC's line between milepost CI 212.55 and milepost CI 218.0 in 2017.⁵ The 5.45-mile segment remains part of the national rail network, but there have been no freight operations on that segment since at least 2015. The Hoosier Valley Railroad Museum operates excursion trains over that 5.45-mile segment pursuant to an agreement with NIRC. NIRC's line, the majority of which CKIN operates, is shown on the map attached as Exhibit 1.

The proposed merger of CKIN and NIRC will consolidate ownership and operation of the NIRC line in a single entity—CKIN. CKIN will continue to operate the 27.52-mile portion of the NIRC line in the same manner as it does today under its lease with NIRC. The Transaction will not result in any adverse changes in service levels, significant operational changes, or a change in the competitive

³ *N. Ind. R.R.—Acquisition Exemption—Town of N. Judson, Ind.*, Docket No. FD 36499 (STB served Apr. 2, 2021) at 1–2.

⁴ *Chesapeake & Ind. R.R.—Lease and Operation Exemption—N. Ind. R.R.*, Docket No. 36702 (STB served May 26, 2023) at 1.

⁵ *Chesapeake & Ind. R.R.—Discontinuance of Service Exemption—In Starke Cnty., Ind.*, Docket No. AB 1259X (STB served Nov. 28, 2017) at 1.

balance with carriers outside the corporate family. Accordingly, the Transaction is exempt under the Board's regulations at 49 C.F.R. § 1180.2(d)(3).

The information required by 49 C.F.R. § 1180.4(g) is set out below.

1180.6(a)(1)(i) *A description of the proposed transaction, including . . . [a] brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.*

The proposed intra-corporate family transaction involves the merger of NIRC with and into CKIN, with CKIN the surviving carrier.⁶ Following the merger, the lease agreement pursuant to which CKIN currently operates 27.52 miles of the NIRC line will terminate, and NIRC's separate corporate existence will cease.

As the foregoing description of the railroads that are the subject of this Verified Notice demonstrates, there will be no changes to service levels, operations, or the competitive landscape as a result of the intra-corporate family Transaction. The merger will not affect CKIN's customers because CKIN will continue to operate the majority of the NIRC line in the same manner it does today.⁷ And because CKIN's operations and service levels will remain unchanged post-merger, the competitive balance with carriers outside the corporate family will be preserved. Accordingly, this Transaction falls within the class of transactions described at 49

⁶ Pursuant to the Transaction, MB Rail IB Equipment NewCo, LLC, a non-carrier subsidiary of G&A, will also merge with and into CKIN.

⁷ The Hoosier Valley Railroad Museum will continue to have the right to provide excursion passenger service on the 5.45-mile segment over which freight service has been discontinued.

C.F.R. § 1180.2(d)(3) and is exempt from prior approval by the Surface Transportation Board.

The name, business address, and telephone number of Applicant is as follows:

Gulf & Atlantic Railways, LLC
245 Riverside Avenue, Suite 250
Jacksonville, FL 32202
Attention: Ryan Ratledge
(561) 448-2050

Applicant's Counsel:

Terence M. Hynes
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

1180.6(a)(1)(ii) The proposed time schedule for consummation of the proposed transaction.

G&A, CKIN, and NIRC intend to consummate the Transaction as soon as practicable after the effective date of this Verified Notice.

1180.6(a)(1)(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

Pursuant to the Transaction, ownership and operation of NIRC's line will be consolidated into a single entity, CKIN. This will simplify G&A's corporate structure, promote efficient management, and eliminate the need for the parties to maintain the current lease arrangement between NIRC and CKIN.

1180.6(a)(5) *A list of the State(s) in which any part of the property of each applicant carrier is situated.*

NIRC's line is located entirely in the State of Indiana. CKIN operates entirely in the State of Indiana.

1180.6(a)(6) *Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed.*

A color map depicting NIRC's line over which CKIN operates is attached as Exhibit 1.

1180.6(a)(7)(ii) *Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.*

At the Effective Time of the merger, the parties will enter into an Agreement and Plan of Merger in the form set forth in Exhibit 2.

1180.4(g)(i) *Level of Labor Protection to be Imposed*

CKIN and NIRC are both Class III rail carriers. Therefore, in accordance with 49 U.S.C. § 11326(c), the labor protection provisions of 49 U.S.C. § 11326 do not apply to the present Transaction.

1105.6 *Environmental Impacts*

49 C.F.R. § 1105.6(c)(1) provides that no environmental documentation will normally be prepared where a transaction will not result in any "significant changes in carrier operations" and does not exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5). Because the Transaction involves only a change in corporate structure of

CKIN and NIRC, it will not result in any operational changes or exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5).

Specifically, the Transaction will not cause a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of the line to motor carriage. Nor will the Transaction result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic, or 50 vehicles a day. The Transaction will not exceed the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii), nor will it result in the transportation of any ozone depleting materials. Therefore, pursuant to the Board's regulations at 49 C.F.R. § 1105.6(c), no environmental documentation is required.

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

1150.8 *Historic Impacts*

This intra-corporate family transaction involves only the corporate consolidation of NIRC and CKIN. As described above, it will not result in any significant change in operations or substantially change the level of maintenance of railroad property. Accordingly, pursuant to the Board's regulations at 49 C.F.R. § 1105.8(b)(2) and (3), this Verified Notice does not require a historic report.

1180.4(g)(3)(i) *Interchange Commitments*

The Agreement and Plan of Merger attached as Exhibit 2 does not include any provision that would limit the future interchange of traffic with any third-party

connecting carrier, nor is NIRC's line subject to any existing agreement that imposes such a restriction.

* * *

For the foregoing reasons, G&A respectfully requests that the Board publish the requisite Notice of Exemption.

Respectfully submitted,

/s/ Terence M. Hynes
Terence M. Hynes
Stephen S. Laudone
Sidley Austin LLP
1501 K Street N.W.
Washington, DC 20005
(202) 736-8000
thynes@sidley.com

Attorneys for Gulf & Atlantic Railways, LLC

Dated February 20, 2024

VERIFICATION

I, Ryan Ratledge, President and Chief Executive Officer of Gulf & Atlantic Railways, LLC, verify under penalty of perjury that the foregoing Verified Notice of Exemption for an intra-corporate family transaction is true and correct to the best of my knowledge, information, and belief.

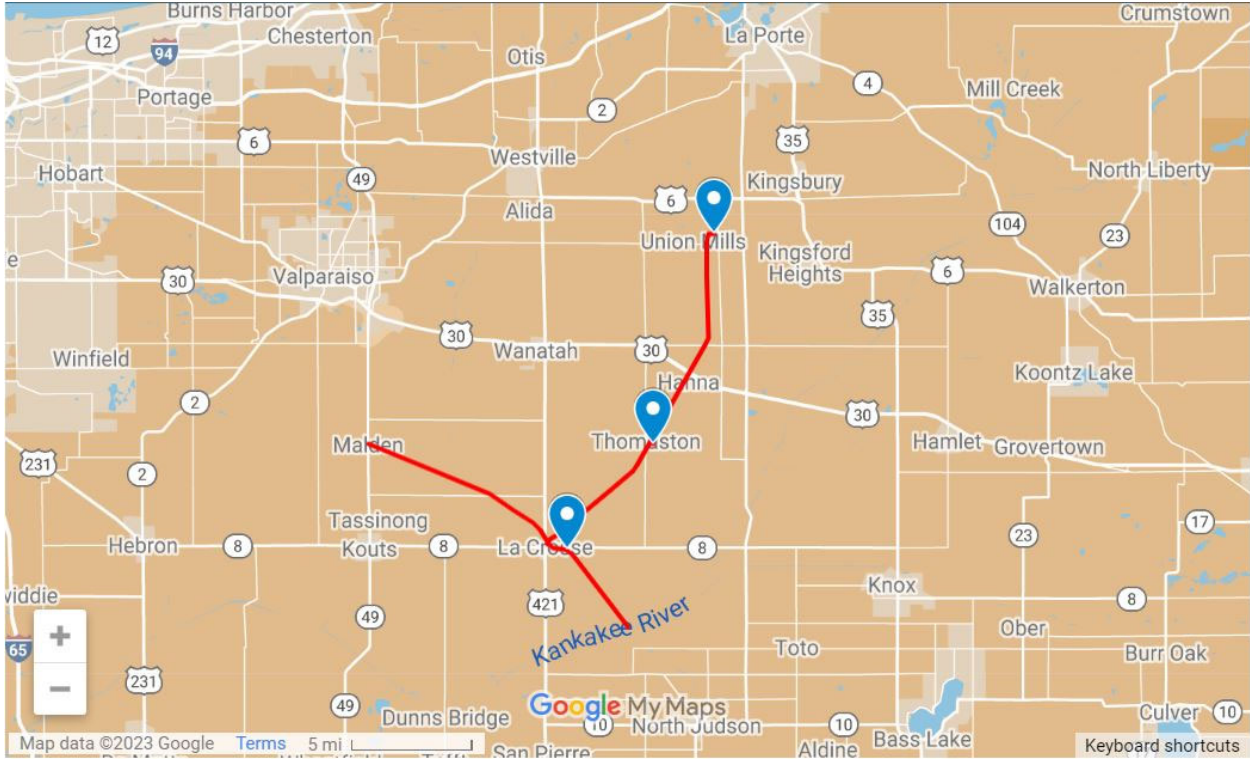


Dated February 20, 2024

Ryan Ratledge

EXHIBIT 1: SYSTEM MAP

Northern Indiana Railroad Company, LLC



**EXHIBIT 2:
AGREEMENT AND PLAN OF MERGER**

**FORM OF
AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (this “Agreement”) is made and entered into as of ____, 2024, by and between Chesapeake and Indiana Railroad Company, LLC, a Delaware limited liability company (“CKIN” or, after the Effective Time (as defined in Article IV hereof), the “Surviving Entity”), MB Rail IB Equipment NewCo, LLC, a Delaware limited liability company (“MB Equipment”) and Northern Indiana Railroad Company LLC, a Kansas limited liability company (“NIRC”, and together with CKIN and MB Equipment, the “Companies”).

WHEREAS, CKIN and MB Equipment are limited liability companies duly formed and validly existing under the laws of the State of Delaware;

WHEREAS, NIRC is a limited liability company duly formed and validly existing under the laws of the State of Kansas;

WHEREAS, Section 18-209 of the Delaware Limited Liability Company Act (the “DE LLC Act”) and Section 17-7681 of the Kansas Revised Limited Liability Company Act (the “KS LLC Act”) permit a limited liability company of the State of Delaware and a limited liability company of the State of Kansas to merge with and into a limited liability company of the State of Delaware;

WHEREAS, Gulf & Atlantic Railways, LLC, as the managing member of each of the Companies, has approved this Agreement and duly authorized the merger of NIRC and MB Equipment with and into CKIN pursuant to the terms of this Agreement; and

WHEREAS, all other conditions precedent to the merger of NIRC and MB Equipment with and into CKIN have been, or, prior to the Effective Time, will be, satisfied or validly waived;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed that, in accordance with Section 18-209 of the DE LLC Act and Section 17-7681 of the KS LLC Act, NIRC and MB Equipment shall be, at the Effective Time, merged with and into CKIN (the “Merger”), with CKIN to be the Surviving Entity. The mode of carrying the Merger into effect shall be as follows:

**ARTICLE I
MERGER**

Prior to the Effective Time, each of the Companies shall take all such additional action as shall be necessary or appropriate in order to effectuate the Merger.

At the Effective Time, NIRC and MB Equipment shall be merged with and into CKIN, the separate existence of NIRC and MB Equipment shall cease, CKIN shall continue in existence, and the Merger shall in all respects have the effects provided for in the DE LLC Act and the KS LLC Act.

If at any time after the Effective Time NIRC or MB Equipment shall consider or be advised that any further assignments, conveyances or assurances in law are necessary or desirable to carry out the provisions hereof, the managing member or other agents of NIRC or MB Equipment shall execute and deliver any and all proper deeds, assignments and assurances in law, and do all such additional things, as are necessary or proper to carry out the provisions hereof.

**ARTICLE II
TERMS OF THE TRANSACTION**

At the Effective Time, all limited liability company interests of NIRC and MB Equipment outstanding immediately prior to the Effective Time shall cease to be outstanding, shall be cancelled and retired without any conversion thereof and without payment of any consideration therefor and shall cease to exist.

**ARTICLE III
CERTIFICATE OF FORMATION
AND LIMITED LIABILITY COMPANY AGREEMENT**

From and after the Effective Time, and until thereafter amended as provided by law, the Certificate of Formation and the Amended and Restated Operating Agreement of CKIN (the “Limited Liability Company Agreement”) as in effect immediately prior to the Effective Time shall be the Certificate of Formation and Limited Liability Company Agreement, respectively, of the Surviving Entity.

**ARTICLE IV
EFFECTIVE TIME**

The Merger shall become effective upon the later of (i) the effectiveness of the Notice of Exemption filed with the STB in Finance Docket No. 36760, and (ii) the filing of a Certificate of Merger in accordance with the DE LLC Act and the KS LLC Act in the office of the Secretary of State of the State of Delaware and in the office of the Secretary of State of the State of Kansas (the “Effective Time”).

**ARTICLE V
TERMINATION**

At any time prior to the Effective Time, either party hereto may terminate or abandon this Agreement.

**ARTICLE VI
AMENDMENTS**

At any time prior to the Effective Time, the parties hereto may amend, modify or supplement this Agreement in such manner as they jointly may determine.

**ARTICLE VII
GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

**ARTICLE VIII
COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. The exchange of copies hereof, including signature pages hereto, by facsimile, e-mail or other means of electronic transmission shall constitute effective execution and delivery hereof as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures transmitted by facsimile, e-mail or other means of electronic transmission shall be deemed to be original signatures for all purposes.

[The rest of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first above written.

CHESAPEAKE AND INDIANA, LLC,
a Delaware limited liability company

By: _____
Name: Ryan Ratledge
Title: Chief Executive Officer

MB RAIL IB EQUIPMENT NEWCO, LLC
a Delaware limited liability company

By: _____
Name: Ryan Ratledge
Title: Chief Executive Officer

NORTHERN INDIANA RAILROAD COMPANY LLC
a Kansas limited liability company

By: _____
Name: Ryan Ratledge
Title: Chief Executive Officer

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Verified Notice of Exemption to be served by first class mail, postage pre-paid, this 20th day of February, 2024, on the following persons:

The Honorable Pete Buttigieg
Department of Transportation
Federal Railroad Administration
Office of Chief Counsel
1200 New Jersey Avenue, SE
Washington, DC 20590

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Federal Trade Commission
Office of General Counsel
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Eric Holcomb
Office of the Governor
200 W. Washington Street
Room 206
Indianapolis, IN 46204

Indiana Department of Transportation
100 North Senate Avenue
Room N758
Indianapolis, IN 46204

Indiana Utility Regulatory
Commission
General Counsel
PNC Center
101 W. Washington Street, Ste. 1500E
Indianapolis, IN 46204

/s/ Stephen S. Laudone
Stephen S. Laudone