



Legal Department

International Right of Way Association
Railroad Day
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Acquiring Abandoned Railroad ROW

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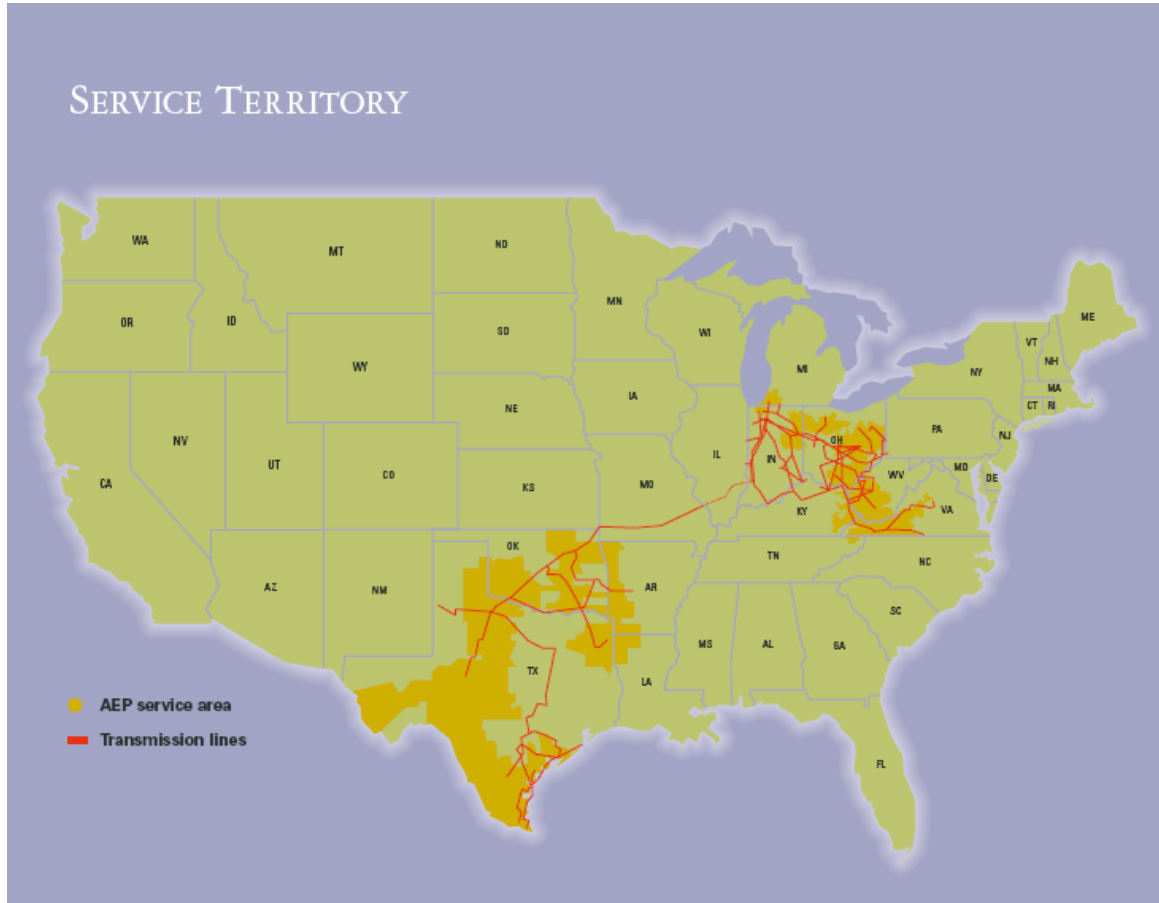
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- Quick Facts about Indiana Michigan Power Company
 - ✓ *Unit of American Electric Power*
 - ✓ *Approximately 582,750 customers*
 - Approximately 454,878 customers in Indiana
 - ✓ *3,980 miles of Transmission Lines*
 - 615 miles of 765 kV extra high voltage lines
 - ✓ *20,241 miles of Distribution Lines*
 - ✓ *Rockport Plant – 2600 MW coal fired – Spencer County, IN*
 - ✓ *Cook Plant – 2,160 MW nuclear – Berrien County, MI*
 - ✓ *Hydro – 22 MW along St. Joseph River – N. Indiana and SE Michigan*
 - ✓ *Fowler Ridge Wind Farm – 150 MW*



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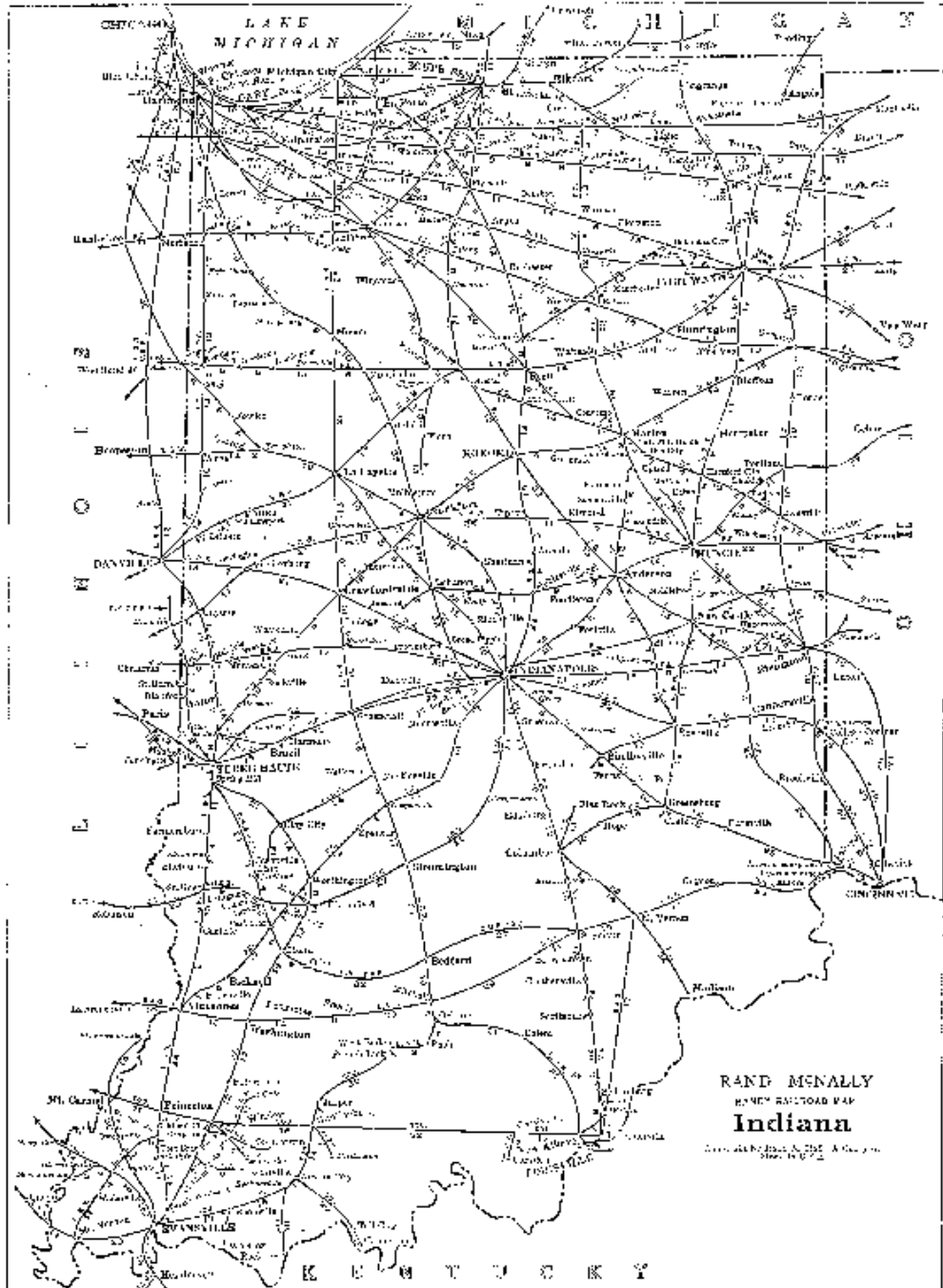
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- How Can You Acquire Abandoned Railroad ROW?
- Basic Legal Principles
- Problems and Pitfalls
- Practical Tips

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- **Acquisition of Abandoned RR ROW**
 - ✓ *Identify railroad company*
 - ✓ *Call land department*
 - ✓ *Negotiate purchase*
 - ✓ *Close purchase and record the deed*

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- What does the railroad own?
- Ross vs. Legler (1964) 199 N.E.2d 346
 - ✓ *Condemnation action by Evansville School Corp*
 - ✓ *Title dispute between landowners*
 - ✓ *Ross claimed fee ownership of a strip of land – Quiet Title Claim*
 - ✓ *Legler claimed fee ownership*



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- Ross vs. Legler

- ✓ *Court applied rules of construction*
- ✓ *Ross – strength of his own title*
- ✓ *Give effect to all words in deed to determine intent of parties*
- ✓ *Public policy does not favor fee conveyance of strips of land*
 - 1905 Condemnation Act – RR may not condemn fee title for a right of way
- ✓ *Deed that describes or defines a “right of way” only conveys an easement*
- ✓ *Title reverts on abandonment to grantor, heirs or assigns*

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- Ross vs. Legler

- ✓ *1908 deeds to railroad – description referred to a 50 foot wide strip of land – as a right of way*
- ✓ *1948 deed to Ross – from Evansville & Ohio Valley Ry Co –*
 - “All that right of way ...”
- ✓ *These deeds expressly defined and described the interest conveyed as a right of way. Only conveyed an easement or right of passage, which terminated on abandonment.*
- ✓ *Held – Ross could not prevail on strength of his title*

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- Ross vs. Legler

- ✓ *Dissent – No condition subsequent or reverter*

- Intent – convey fee interest not easement
 - Land not condemned – 1905 Act not applicable

- ✓ *Indiana - General Rule – reference to “right of way” – easement interest*

- ✓ *Ohio – specific reverter clause required*

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- 1968 – PRR merges with NYC – Penn Central
- PC bankruptcy follows
- Congress creates Conrail – April 1, 1976
 - ✓ *Operating rail assets to CR*
 - ✓ *PC kept non-operating rail assets*
 - ✓ *Massive abandonments*
 - ✓ *Rails to Trails Movement*
 - ✓ *Railbanking*
 - ✓ *Right of Way Act*

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- Class actions challenge sales by PC or RR's
- Hamilton County
 - ✓ *Monon Line*
 - ✓ *Fee or Easement*
- Clark & Hamilton County Farm Bureau vs. CSX
(2000) 737 N.E.2d 752
 - ✓ *Plaintiffs - words "Right of Way" means easement*
 - ✓ *Construe intent of parties*

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- Clark vs. CSX
 - ✓ *Court reviewed and construed deeds*
 - ✓ *Some – conveyed fee simple to railroad*
 - “Convey and warrant” language per statute
 - Limitation language
 - Ignore cover of deed
 - Conveyance of strip of land can exist w/o limitation – fee
 - Value
 - ✓ *Some – conveyed easement*
 - Ambiguity – right of way

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- Class actions – fiber optic lines
- RR holds only easement
- Grant for other purposes beyond scope of easement
- Settlements
 - ✓ *Class counsel appointed to represent landowners in future grants*

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- **Thorough and complete title search**
 - ✓ *Marketable Title search not sufficient*
 - ✓ *Go back to severance deed*
 - ✓ *Examine and understand history and law at time*
 - ✓ *Bring title forward to present day*
 - Intervening grants
 - Additional lands acquired – interest change

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- **Determine facts**
 - ✓ *Who do you think owns land?*
 - ✓ *Are you dealing with abandonment?*
 - ✓ *Did railroad give deed to non-railroad?*
 - ✓ *Adjoining landowner?*
 - ✓ *If settlement - class counsel been appointed?*
 - ✓ *Is litigation pending or threatened?*
 - ✓ *What can your client do if title is challenged?*

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THANKS!
QUESTIONS?

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