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ATTORNEYS AT LAW

29 North Wacker Drive
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November 18, 2019

249000

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
November 18, 2019
Part of
Public Record

Re: **Docket No. FD 36349**
The Indiana Rail Road Company -- Amended Trackage
Rights Exemption -- CSX Transportation, Inc.

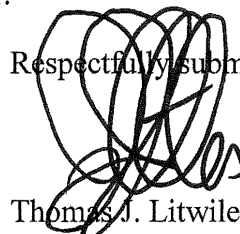
Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Verified Notice of Exemption of The Indiana Rail Road Company Pursuant to 49 C.F.R. § 1180.2(d)(7)**, dated November 18, 2019. The sum of \$1,400, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

FEE RECEIVED
November 18, 2019
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,



Thomas J. Litwiler
Attorney for The Indiana Rail Road Company

TJL:tl

Attachment

FILED
November 18, 2019
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36349

THE INDIANA RAIL ROAD COMPANY
-- AMENDED TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.

**VERIFIED NOTICE OF EXEMPTION OF
THE INDIANA RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

**ATTORNEY FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: November 18, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36349

THE INDIANA RAIL ROAD COMPANY
-- AMENDED TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.

**VERIFIED NOTICE OF EXEMPTION OF
THE INDIANA RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

The Indiana Rail Road Company (“INRD”), a Class II common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) for its acquisition of amended, limited overhead trackage rights extending over a line of railroad of CSX Transportation, Inc. (“CSXT”) between Sullivan and Oaktown, Indiana, a distance of approximately 14.55 miles. INRD holds existing, Board-authorized permanent and temporary overhead trackage rights on the Sullivan-Oaktown line which INRD can utilize in conjunction with specified categories of traffic. The proposed transaction will amend those existing trackage rights to revise the traffic that INRD may handle and make modifications to compensation and volume provisions.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), INRD submits the following information:

Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)

Pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated as of August 1, 2009 and November 20, 2009, INRD holds trackage rights over CSXT's rail line from Sullivan to Carlisle and Oaktown, Indiana 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. *See The Indiana Rail Road Company -- Amended Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 35137 (STB served May 22, 2008 and Dec. 4, 2009); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 35287 (STB served Sep. 2, 2009); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 35328 (STB served Dec. 31, 2009).

Pursuant to a series of temporary trackage rights exemptions, CSXT and INRD agreed to temporarily expand the existing Sullivan-Oaktown trackage rights to allow INRD to handle unit coal trains to an additional off-line destination. *See The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (STB served Oct. 14, 2016); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 1) (STB served Feb. 9, 2017); *The Indiana Rail Road Company -- Temporary Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 2) (STB served Dec. 22, 2017 and Feb. 8, 2019). The expanded trackage rights are scheduled to expire on December 31, 2019.

INRD and CSXT have now agreed to amend the existing trackage rights to make permanent the previously temporary off-line destination, to clarify other allowable destinations and delete destinations that have ceased receiving coal, and to modify contractual provisions regarding compensation and contemplated volumes of traffic. Thus, pursuant to a written Supplemental Agreement No. 7 dated as of July 19, 2019 between INRD and CSXT, INRD proposes to acquire limited, overhead trackage rights over CSXT's line of railroad between the connection with INRD at approximately CSXT Milepost OZA 204.5 at Sullivan, Indiana and the

connection with trackage serving the Oaktown Mine at approximately CSXT Milepost OZA 219.05 at Oaktown, Indiana, including the connection with trackage serving the Sunrise Mine at approximately CSXT Milepost OZA 214.5 at Carlisle, Indiana, a total distance of approximately 14.55 miles, for the sole purpose of handling loaded and empty unit coal trains between the Oaktown Mine or the Sunrise/Carlisle Mine and the following destinations served by INRD or in interline service with other rail carriers:

- Indianapolis Power & Light generating station at Petersburg, Indiana;
- Hoosier Energy generating station at Merom, Indiana;
- Vectren and Alcoa generating stations at Warrick, Indiana; and
- Kentucky Utilities E.W. Brown generating station at Harrodsburg, Kentucky.

The proposed trackage rights exemption will subsume and replace INRD's prior trackage rights exemptions granted in Docket Nos. FD 35137, 35287 and 35328.

INRD is indirectly controlled by CSXT, but operates as an independent Class II rail carrier. *See CSX Corporation and CSX Transportation, Inc. -- Control -- The Indiana Rail Road Company*, Docket No. FD 32892 (STB served Nov. 7, 1996).

The full name and address of the applicant carrier herein is as follows:

The Indiana Rail Road Company
1500 South Senate Avenue
Indianapolis, Indiana 46225
(317) 262-5140

Any questions concerning this Notice should be sent to INRD's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)

INRD intends to consummate the exemption authority proposed in this notice on December 18, 2019.

Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)

The proposed amended trackage rights revise and clarify the destinations for which INRD may handle unit coal train traffic from the Oaktown and Sunrise/Carlisle mines, including making permanent INRD's currently temporary ability to handle unit coal train traffic destined to the Kentucky Utilities generating station at Harrodsburg, Kentucky.

States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)

INRD owns or operates over rail property in the States of Indiana, Illinois and Kentucky. CSXT owns and operates over rail property in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia, in the District of Columbia, and in the Provinces of Ontario and Quebec in Canada.

Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)

A map of the rail line over which INRD proposes to acquire amended trackage rights is attached hereto as Exhibit 1.

Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)

A redacted copy of the Supplemental Agreement dated as of July 19, 2019 between CSXT and INRD is attached hereto as Exhibit 2. A non-redacted, confidential version of that agreement is being submitted under seal pursuant to a Motion for Protective Order filed

concurrently with this notice of exemption. Copies of the underlying trackage rights agreement dated as of May 15, 2008 between CSXT and INRD and prior supplemental agreements dated August 1, 2009 and November 20, 2009 were previously submitted to the Board in Docket Nos. FD 35137, 35287 and 35328, respectively.

Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)

As a condition to this exemption, INRD agrees to the employee protective conditions established in *Norfolk and Western Ry. Co. -- Trackage Rights -- BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc. -- Lease and Operate*, 360 I.C.C. 653 (1980).

Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

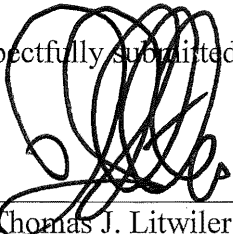
A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of amended trackage rights by INRD is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), INRD's proposed trackage rights acquisition also is exempt from historic preservation reporting requirements.

Respectfully submitted,

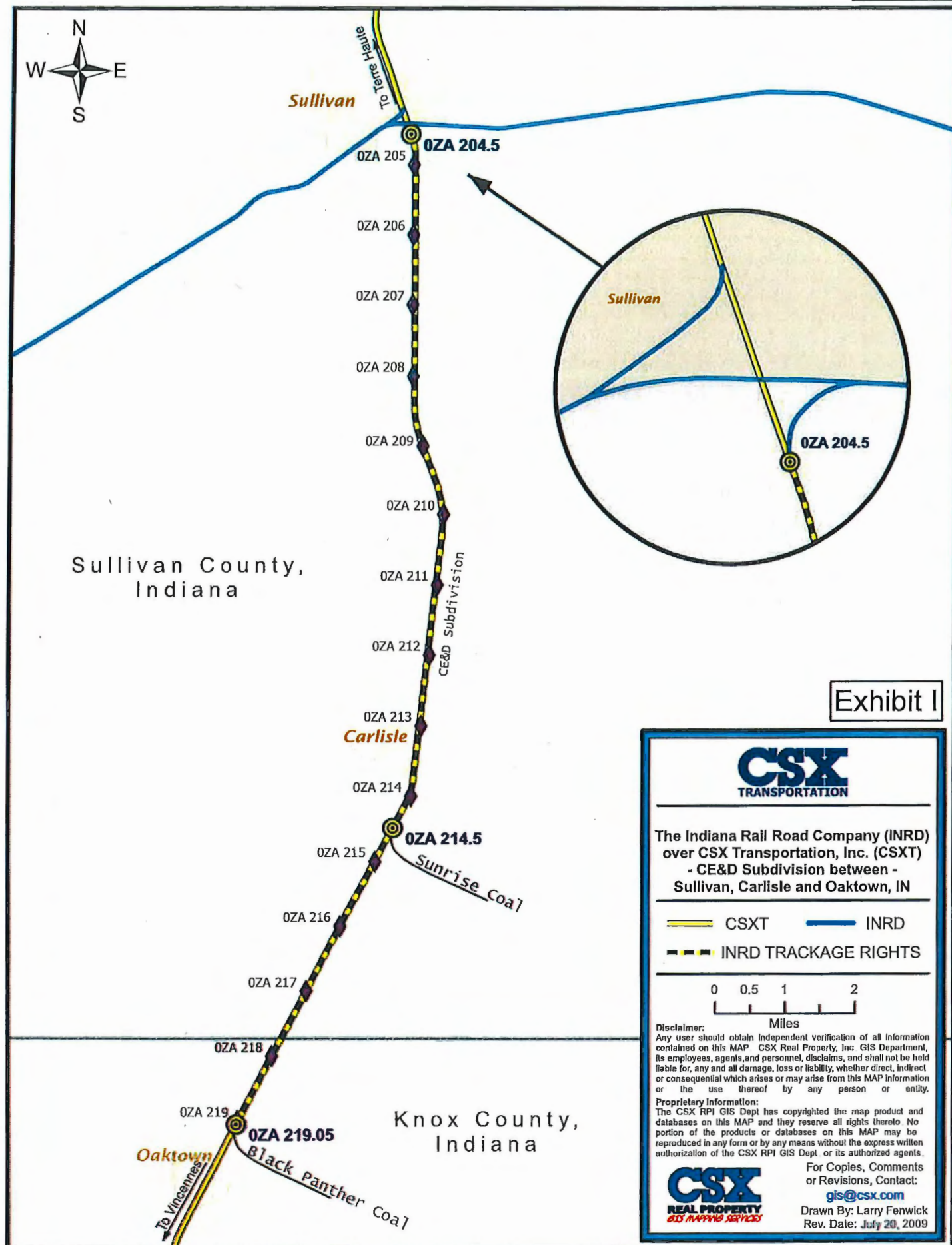
By:



Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEY FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: November 18, 2019



REDACTED

SUPPLEMENTAL AGREEMENT No. 7

THIS SUPPLEMENTAL AGREEMENT No. 7, entered into as of this 19th day of July, 2019 between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT" or "Owner", and the INDIANA RAIL ROAD COMPANY, hereinafter referred to as "INRD" or "User."

WITNESSETH:

WHEREAS, By Agreement dated May 15, 2008 and supplemented August 1, 2009; August 1, 2015; and September 1, 2016 (as supplemented, the "Agreement"), INRD has trackage rights over CSXT's CE&D Subdivision between the connection of CSXT with trackage serving the Oaktown Mine at Oaktown, IN at approximate CSXT milepost OZA 219.05, and the connection of CSXT with INRD at approximate CSXT milepost OZA 204.5 at Sullivan, IN, a distance of approximately 14.5 miles, including the use of CSXT's connection with trackage serving the Sunrise Mine at approximate CSXT milepost OZA 214.5 at Carlisle, IN; and

WHEREAS, Sunrise Coal plans to load primarily out of the Oaktown Mine location and load at the Carlisle location on an as-needed basis; and

WHEREAS, The Agreement specifies a minimum monthly payment to be paid by INRD to CSXT on the basis of projected coal loadings at Carlisle and Oaktown; and

WHEREAS, The Agreement specifies that the Per Car Mile Charge shall be revised upward or downward each year per AAR Railroad Cost Indexes; and

WHEREAS, The INRD desires to obtain trackage rights upon CSXT's railroad, for the sole purpose of handling unit coal trains to serve the Kentucky Utilities EW Brown Generating Station in Brown, KY from the Oaktown Mine; and

WHEREAS, The Parties desire that the trackage rights compensation and restrictions on use be adjusted to reflect the change in AAR Railroad Cost Indexes, and the change in operations by Sunrise Coal.

NOW, THEREFORE, The Parties hereto, intending to be legally bound, agree as follows:

1. **ARTICLE 3. RESTRICTION ON USE**, Sub-Article A, in the Agreement is hereby re-written in its entirety as follows:

- A. The Trackage Rights herein granted are granted for the sole purposes of INRD operating its loaded coal trains and empty hopper trains in overhead service between the load-out facilities of the Sunrise Coal Mines in Carlisle, IN and Oaktown, IN, or their successors or assigns, on the one hand, and INRD's line of railroad running east to west through Sullivan, IN on the other. As of the date of this Agreement, said coal and empty hopper trains operated by INRD shall be

REDACTED

limited to those supporting Sunrise Coal Company's, or its successors' or assigns', contracts to provide coal to:

IP&L's generating station at Petersburg, IN,

Hoosier Energy's Merom generating station,

Vectren and Alcoa generating stations at Warrick, IN,

Kentucky Utilities EW Brown generating station at Brown, KY, and

2. **ARTICLE 3. RESTRICTION ON USE**, new Sub-Article E, is added to the Agreement as follows:

E. The parties contemplate, pursuant to this Agreement, shipments by INRD as follows:

A maximum of _____ of coal in 2020. CSXT will accommodate these INRD shipments without prejudice or partiality in accordance with the provisions of this Agreement. As of the date of this Supplemental Agreement,

_____. If at any time during the term of this Agreement, Carlisle or Oaktown loadings under the aforesaid contracts should be projected to increase, INRD shall so notify CSXT's Coal Development and Joint Facility representatives as soon as possible, providing the specifics and volumes of the projected increases. CSXT will review its then current levels of all shipments, capacity and related factors on the Subject Trackage, and accommodate without prejudice or partiality, such total INRD shipments as CSXT's capacity at such time permits. If INRD desires to handle loadings in excess of then available capacity, the parties shall enter into good faith negotiations relative to additional capacity required, provided, however, that neither party shall incur any penalty of any kind in the event they are unable to agree upon a mutually acceptable plan to increase CSXT's capacity.

3. **ARTICLE 5. COMPENSATION**, Sub-Articles A and D, in the Agreement are hereby re-written in their entireties as follows:

- A. INRD, for the use it makes of the Subject Trackage between Carlisle and Sullivan, shall pay to CSXT a minimum of _____ per month in each calendar month during the term hereof. For the use it makes of the Subject Trackage between Oaktown and Sullivan, INRD shall pay to CSXT a minimum of _____ per month in each calendar month during the term hereof; said amounts to be hereinafter referred to as the Current Charge. The Current Charge with respect to Carlisle movements reflects a volume of _____ cars, loaded and empty combined, per month, and each locomotive operated over the Subject Trackage a distance of 10.0 miles at a rate of _____ per car mile. The Current Charge with respect to Oaktown movements reflects a monthly volume of _____ cars, loaded and empty combined, per month, and each locomotive operated over the Subject Trackage a distance of 14.5 miles at a rate of _____ per car mile. The Current Charge shall be due in full in advance of the beginning of each calendar month.

REDACTED

D. In no event, shall INRD pay to CSXT less than
in any calendar month during the term of this Agreement.

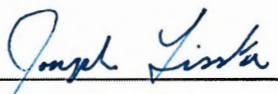
4. **ARTICLE 18. REGULATORY APPROVAL**, Sub-Article A, in the Agreement is hereby re-written in its entirety as follows:

A. Should this Supplemental Agreement No. 7 require the prior approval of the Surface Transportation Board (STB), User, at its own cost and expense, shall initiate and thereafter diligently pursue an appropriate application, petition or notice to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval of this Supplemental Agreement No. 7.

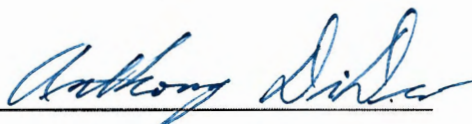
5. This Supplemental Agreement No. 7 shall supersede and nullify in its entirety, Supplemental Agreement No. 5 dated August 1, 2015, and Supplemental Agreement No. 6 dated September 1, 2016. Supplemental Agreement dated August 1, 2009 shall remain in force only as to its provisions governing **ARTICLE 1. GRANT OF TRACKAGE RIGHTS**, **ARTICLE 2. USE OF SUBJECT TRACKAGE**, and **ARTICLE 3., Sub-Article B, RESTRICTION ON USE**. In all other respects, the Agreement, as supplemented, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Supplemental Agreement No. 7, in duplicate, as of the day and year first above written.

WITNESS


Name: Joseph Lisska
Title: Manager Intercarrier Agreements

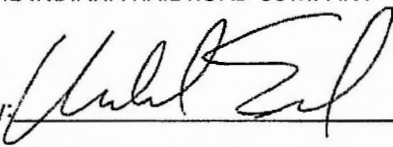
CSX TRANSPORTATION, INC.

By: 
Name: Anthony DiDeo
Title: Director Intercarrier Mgmt

WITNESS


Name: Jenny Van Vatter
Title: Assistant Controller

THE INDIANA RAIL ROAD COMPANY

By: 
Name: MICHAEL ENGER
Title: SVP & CFO

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36349

THE INDIANA RAIL ROAD COMPANY
-- AMENDED TRACKAGE RIGHTS EXEMPTION --
CSX TRANSPORTATION, INC.

The Indiana Rail Road Company (INRD) has filed a verified notice of exemption under 49 CFR 1180.2(d)(2)(7) to acquire limited, amended overhead trackage rights from CSX Transportation, Inc. (CSXT). Pursuant to a written Supplemental Agreement dated as of July 19, 2019, CSXT has agreed to grant INRD overhead trackage rights over approximately 14.55 miles of CSXT's rail line between the connection with INRD at approximately CSXT Milepost OZA 204.5 at Sullivan, Indiana and the connection with trackage serving the Oaktown Mine at approximately CSXT Milepost OZA 219.05 at Oaktown, Indiana, including the connection with trackage serving the Sunrise Mine at approximately CSXT Milepost OZA 214.5 at Carlisle, Indiana, for the sole purpose of handling loaded and empty unit coal trains between the Oaktown Mine or the Sunrise/Carlisle Mine and the following destinations served by INRD or in interline service with other rail carriers:

- Indianapolis Power & Light generating station at Petersburg, Indiana;
- Hoosier Energy generating station at Merom, Indiana;
- Vectren and Alcoa generating stations at Warrick, Indiana; and
- Kentucky Utilities E.W. Brown generating station at Harrodsburg, Kentucky.

INRD holds existing permanent and temporary overhead trackage rights on the CSXT Sullivan-Oaktown line pursuant to a series of prior STB exemption authorizations. *See*

The Indiana Rail Road Company -- Amended Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 35137 (STB served May 22, 2008 and Dec. 4, 2009); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 35287 (STB served Sep. 2, 2009); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 35328 (STB served Dec. 31, 2009); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (STB served Oct. 14, 2016); *The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 1) (STB served Feb. 9, 2017); and *The Indiana Rail Road Company -- Temporary Trackage Rights Exemption -- CSX Transportation, Inc.*, Docket No. FD 36068 (Sub-No. 2) (STB served Dec. 22, 2017 and Feb. 8, 2019). The proposed amendment revises and clarifies the destinations for which INRD may handle unit coal train traffic from the Oaktown and Sunrise/Carlisle mines, and modifies other terms regarding compensation and contemplated volumes of traffic.

The amended trackage rights will be effective on December 18, 2019.

As a condition to this exemption, any employees affected by the amended 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 verified 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 to stay must be filed by 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, SW, 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 60606-3208.

According to INRD, this transaction does not require environmental documentation under 49 CFR 1105.6(c) and is exempt from historic preservation reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at www.stb.gov.

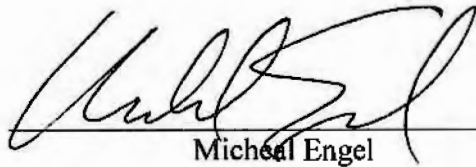
Decided: December __, 2019.

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

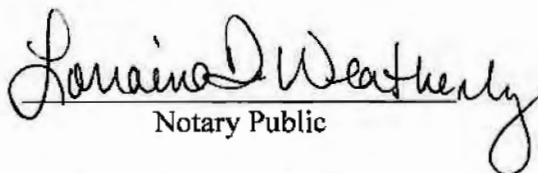
VERIFICATION

State of Indiana)
)
County of Marion) SS:

Micheal Engel, being duly sworn, deposes and says that he is Senior Vice President and Chief Financial Officer of The Indiana Rail Road Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.


Micheal Engel

SUBSCRIBED AND SWORN TO
before me this 12 day
of November, 2019.


Notary Public

My Commission expires:

