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November 18, 2019

249002

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 the **Motion for Protective Order of The Indiana Rail Road Company**, dated November 18, 2019.

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

Respectfully submitted,


Thomas J. Litwiler
Attorney for The Indiana Rail Road Company

TJL:tl

Attachment

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36349

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

**MOTION FOR PROTECTIVE ORDER OF
THE INDIANA RAIL ROAD COMPANY**

Thomas J. Litwiler
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**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.

**MOTION FOR PROTECTIVE ORDER OF
THE INDIANA RAIL ROAD COMPANY**

Pursuant to 49 C.F.R. § 1104.14(b), The Indiana Rail Road Company (“INRD”) hereby requests that the Board issue a protective order allowing INRD to file under seal the executed, unredacted Supplemental Agreement No. 7 dated as of July 19, 2019 between INRD and CSX Transportation, Inc. (“CSXT”) which is the subject of this proceeding.

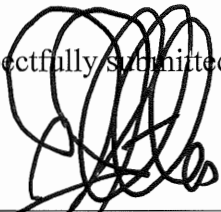
INRD is filing concurrently herewith a notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for INRD's acquisition of amended, limited overhead trackage rights over approximately 14.55 miles of CSXT line between Sullivan and Oaktown, Indiana. INRD has attached a redacted version of the Supplemental Agreement as Exhibit 2 to its notice of exemption pursuant to 49 C.F.R. § 1180.6(a)(7)(ii) and has filed the unredacted agreement under seal, subject to this request for a protective order. The Supplemental Agreement contains commercially sensitive and confidential information the public release of which could cause competitive or other injury to INRD and CSXT. Public disclosure of the unredacted agreement also is not necessary for the consideration or disposition of INRD's notice of exemption.

INRD thus requests that the Board accept the unredacted Supplemental Agreement for filing under seal and adopt the proposed protective order contained in the appendix hereto to govern access to the unredacted agreement. This approach is consistent with

that taken by the Board in prior similar circumstances. *See, e.g., Texas Pacific Transportation, Ltd. -- Trackage Rights Exemption -- Union Pacific Railroad Company*, Docket No. FD 36319 (STB served Aug. 9, 2019); *Cedar River Railroad Company -- Trackage Rights Exemption -- Chicago, Central & Pacific Railroad Company*, Docket No. FD 35593 (STB served Feb. 24, 2012).

WHEREFORE, INRD respectfully requests that the Board adopt the protective order contained in the appendix hereto.

Respectfully Submitted,

By: 

Thomas J. Litwiler
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(312) 252-1508

**ATTORNEY FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: November 18, 2019

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, "Confidential Information" means the unredacted Supplemental Agreement No. 7 dated as of July 19, 2019 between The Indiana Rail Road Company ("INRD") and CSX Transportation, Inc. filed under seal on November 18, 2019 in STB Docket No. FD 36349.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to INRD of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of INRD or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on INRD, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential version may be served on other parties in electronic format only.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of Confidential Information by The Indiana Rail Road Company (“INRD”) in STB Docket No. FD 36349, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36349 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that INRD shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Signature: _____

Position: _____

Affiliation: _____