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June 9, 2022

VIA E-FILING

Re: Toledo, Peoria & Western Railway Corp. – Trackage Rights Exemption –
Keokuk Junction Railway Co.
Surface Transportation Board Docket No. FD 36617

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Trackage Rights Notice of Exemption for Toledo, Peoria & Western Railway Corp. ("TPW"). In addition, TPW is filing a motion for protective order under 49 CFR §1140.14(b).

The filing fee has been paid via pay.gov. If there are any questions related to this filing, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Toledo, Peoria & Western Railway Corp.

Enclosure

FILED
June 9, 2022
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 9, 2022
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36617

**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS EXEMPTION –
KEOKUK JUNCTION RAILWAY CO.**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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*Attorneys for
Toledo, Peoria & Western Railway Corp.*

Dated: June 9, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36617

**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS EXEMPTION –
KEOKUK JUNCTION RAILWAY CO.**

VERIFIED NOTICE OF EXEMPTION

Toledo, Peoria & Western Railway Corp. (“TPW”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for TPW’s acquisition of trackage rights over a line of railroad owned by Keokuk Junction Railway Co. (“KJ”) pursuant to a written trackage rights agreement between TPW and KJ.¹ KJ has agreed to grant overhead trackage rights to TPW over KJ track situated between the Union Pacific Railroad (“UP”) interchange at MP 118.5, near Hollis (a/k/a Sommer), Illinois, and MP 122.4, near Mapleton, Illinois, to allow TPW to access the TPW-owned Mapleton Industrial Spur on one end and to access trackage rights it holds over UP on the other end (the “Subject Trackage”).² Included in this grant are trackage rights to the portion of both legs of the wye track owned by KJ where the Mapleton Industrial Spur connects to the Subject Trackage. The Subject Trackage will extend approximately 3.9 miles. A map of the Subject Trackage is attached hereto as Exhibit A. The

¹ These trackage rights were originally ordered by the Board in *Keokuk Junction Railway Company – Feeder Line Acquisition – Line of Toledo, Peoria & Western Railway Corp., Between La Harpe and Hollis, IL*, STB Finance Docket No. 34335, slip op. at 3, 25 (served Oct. 28, 2004) *affirmed on a Petition for Reconsideration* in a decision served Feb. 7, 2005.

² *Toledo, Peoria & Western Railroad Company Et al., Trackage Rights Acquisition, etc.*, ICC Finance Docket No. 19922 (decided Oct. 28, 1958).

trackage rights are intended to be effective on the later of May 20, 2022 or the effective date of the Board's decision approving the trackage rights.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights covered by this Notice are based upon a written agreement, a copy of which is attached hereto as Exhibit B, and is not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), TPW provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) Description of Proposed Transaction

KJ owns and operates the Subject Trackage situated between the UP interchange at MP 118.5, near Hollis (a/k/a Sommer), Illinois, and MP 122.4, near Mapleton, Illinois. KJ is granting TPW trackage rights for TPW to operate between the TPW-owned Mapleton Industrial Spur on one end and an interchange with UP where TPW has with trackage rights over UP on the other end.

The name, business address and telephone number of Applicant are:

Toledo, Peoria & Western Railway Corp.
200 Meridian Centre, Suite 270
Rochester, NY 14618

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Eric M. Hocky
Clark Hill PLC
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Justin J. Marks
Clark Hill PLC
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Washington, DC 20004
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(a)(1)(ii) Consummation Date

TPW intends to commence operations under the trackage rights agreement on the effective date of the notice.

(a)(1)(iii) Purpose of Transaction

KJ is granting TPW trackage rights for TPW to operate between the TPW-owned Mapleton Industrial Spur on one end and an interchange with UP where TPW has trackage rights over UP on the other end.

(a)(5) States in which Property of the Applicant is Situated

TPW currently operates in the states of Illinois and Indiana, and the Subject Trackage is located in Illinois.

(a)(6) Map

A map showing the Subject Trackage is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the Trackage Rights Agreement is attached as Exhibit B.

Labor Protection

Under 49 U.S.C. §10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, Section 11326(c) does not provide for labor protection for transactions under 49 U.S.C. §§11324 and 11325 that involve only Class III rail carriers. Because both TPW and KJ are Class III rail carriers, the Board may not impose labor protective conditions on this transaction.

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(ii).

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Conclusion

Based on the information provided above, TPW requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



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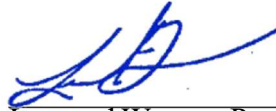
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*Attorneys for
Toledo, Peoria & Western Railway
Corp.*

Dated: June 9, 2022

VERIFICATION

I hereby verify on behalf of Toledo, Peoria & Western Railway Corp., under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.



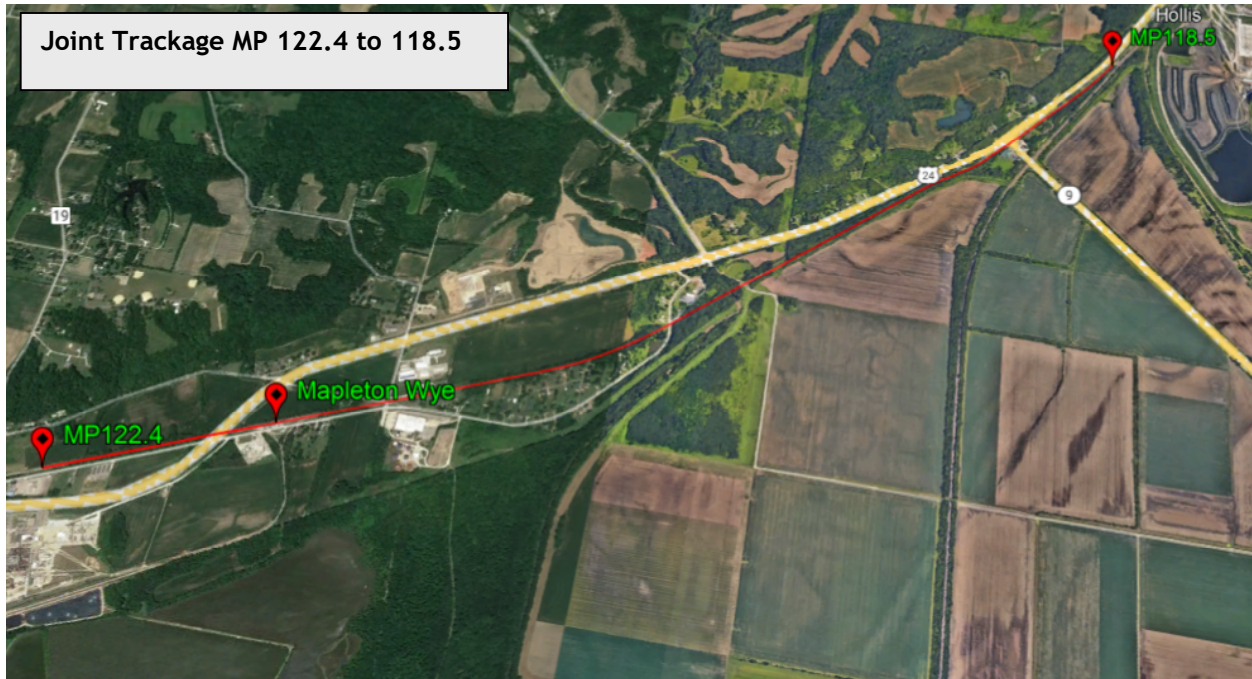
Leonard Wagner President

Dated: June 09, 2022

EXHIBIT A

MAP

Joint Trackage MP 122.4 to 118.5



Mapleton KJRY/TPWR Property lines

Write a description for your map.



EXHIBIT B

TRACKAGE RIGHTS AGREEMENT

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, dated as of May 20, 2022 (the "Effective Date"), by and between **KEOKUK JUNCTION RAILWAY CO.**, an Iowa corporation ("KJ"), and **TOLEDO, PEORIA & WESTERN RAILWAY CORP.**, a Delaware corporation ("TPW");

WITNESSETH, THAT:

WHEREAS, KJ is the owner of approximately 3.9 miles of railroad between Hollis (a/k/a Sommer), Illinois (MP 118.5) and Mapleton, Illinois (MP 122.4), in Peoria County, Illinois, which connects with the Union Pacific Railroad ("UP") at Hollis, and with the Mapleton Industrial Spur at Kolbe Junction (MP 121.5), and TPW desires to access the Mapleton Industrial Spur by way of said track; and

WHEREAS, a wye exists where the Mapleton Industrial Spur connects to the aforementioned segment of track at Kolbe, Illinois ("WYE"); and

WHEREAS, TPW is the owner of the Mapleton Industrial Spur and the portion of both legs of the WYE south of West Wheeler Road (the "TPW Portion of the WYE"); and

WHEREAS, TPW has trackage rights over UP trackage that connects with the Joint Trackage (as defined below) at Hollis, and TPW would like to exercise those trackage rights over UP; and

WHEREAS, TPW desires to access such UP trackage by way of the Joint Trackage;

WHEREAS, KJ has agreed to grant trackage rights to the Joint Trackage and use of that portion of both legs of the WYE owned by KJ (the "KJ Portion of the WYE") to TPW, in order to allow TPW to continue to access the Mapleton Industrial Spur and to access UP trackage; and

WHEREAS, TPW has agreed to grant trackage rights to KJ for the purpose of turning its locomotives on the TPW Portion of the WYE.

NOW, THEREFORE, KJ and TPW, intending to be legally bound, hereby agree as follows:

1. **JOINT LINE DEFINED.** The term "Joint Trackage" as used herein shall refer to that portion of the KJ's main line railroad tracks between the UP interchange at MP 118.5, near Hollis, Illinois, and MP 122.4, near Mapleton, Illinois, along with the right-of-way for the aforesaid track, signals, interlocking devices and plants, and other appurtenances necessary to the use of the aforesaid tracks. It is understood and agreed to by the parties hereto that the length of the Joint Trackage as defined herein is 3.9 miles. "Mapleton Industrial Park" shall refer to the TPW trackage (and businesses currently located thereon) attached to the TPW Portion of the WYE running in a generally southerly direction. The Joint Trackage and the WYE are depicted on Appendix A attached hereto.

2. **GRANT FOR OPERATION OF TPW TRAINS.** Subject to the terms and conditions herein contained and the price of [REDACTED] per year, KJ grants to TPW the non-exclusive right to use the Joint Trackage for the sole purpose of operating its freight trains, locomotives, hi-rail maintenance vehicles, cabooses and cars, including track inspection cars and work or wreck equipment, in its account, over the Joint Trackage. TPW shall not have the right to:

(A) set out, pick up or store freight cars, passenger cars or other rail equipment; or to perform any switching movement upon said Joint Trackage, or any part thereof, except for the interchange of traffic between KJ and TPW pursuant to any interchange agreement in effect between the parties, or take into its trains or set off therefrom any fuel or other supplies at any point on said Joint Trackage; or

(B) originate or terminate any freight or transact any business whatsoever upon any portion of the Joint Trackage nor to serve any industry, team or house track now connected to, or which may in the future be connected to, the Joint Trackage; except that TPW shall have such right to access the connection to UP, known as the "PT Main" and where there is a pocket track owned by UP between MP 118.62 and MP 119.21 that is used by the TPW to connect to the UP main line at MP 118.78 separate from the PT Main, which track is used by TPW for interchange movements to and from UP and which shall continue to be used by TPW to interchange trains with UP; or

(C) operate any passenger train, whether for revenue or otherwise, on the Joint Trackage; or

(D) permit or admit any third party to use all or any portion of the Joint Trackage; provided, however, that cars originating or terminating at the Mapleton Industrial Park and transiting the Joint Trackage in TPW trains, in the ordinary course of business, pursuant to haulage, reciprocal switching or similar agreements, shall not be considered third party use; and further provided, that, if instructed by KJ's dispatcher or his authorized representative, TPW shall be permitted to use any and all sidings connecting with the Joint Trackage for the purpose of meeting and passing of trains and, in the event of emergency, shall be permitted to set out cars along same on such tracks as may be designated by KJ's dispatcher, or his authorized representative.

3. **OPERATION OF JOINT TRackage.**

(A) TPW's trains operating in either direction shall be required when approaching Hollis and Kolbe Junction to report by telephone or radio to KJ's dispatcher, or his authorized representative, unless other means of indicating such arrivals or departures to KJ are installed.

(B) TPW shall be responsible for all procedures that may be necessary in order to enter or exit UP tracks at Hollis.

(C) TPW shall have the right to interchange cars with KJ on designated interchange tracks as agreed to by designated local operating officers of the parties.

(D) Operation over the Joint Trackage by TPW shall be strictly limited to a gross weight of not more than 293,000 pounds per car. TPW shall be in default of this Agreement if the gross weight of cars in its trains exceeds 293,000 pounds per car.

(E) Ingress and egress of TPW trains to the Joint Trackage shall be limited to the WYE at Mapleton, Illinois and Hollis, Illinois, including access to and from the connecting tracks with UP, as described in Section 2(B) above, only, unless interchanged with KJ as provided in Subsection (C), above.

(F) TPW shall not cross the South Walnut Street public crossing in Mapleton, Illinois.

4. **PAYMENT BY USER.**

(A) Beginning with the Effective Date, TPW shall pay to KJ, in addition to the expenses herein otherwise provided, the sum of [REDACTED] per year to operate over the Joint Trackage.

(B) [REDACTED]

(C) [REDACTED]

(D) [REDACTED]

5. **INSURANCE.** Each party shall provide and maintain in effect during the term of this Agreement, a policy of railroad liability insurance including contractual liability covering liability assumed by each party under the provisions of this Agreement. Said Policies of Insurance and subsequent renewals shall have limits of liability of not less than [REDACTED]. The aforesaid Policies of Insurance shall cover the parties' contractual obligations herein; contain endorsements naming the other party as an additional insured party thereunder; and waiving subrogation to the extent required by the liability provisions herein. Each party hereto shall notify the other party in writing of any reduction in the limits of liability or any cancellation or non-

renewal, at least thirty (30) days prior thereto, at the address for notice provided for in Section 29.

A Certificate of Insurance, containing the required endorsements, shall be furnished by each party to the other prior to the commencement of any train operations described in this Agreement. If either party fails to maintain the required insurance in effect, such shall constitute a default under this Agreement.

The fact that insurance, including self-insurance, is obtained by either party shall not be deemed to release or diminish the liability of such party, including liability under the indemnity provisions of this Agreement. Damages recoverable by either party against the other party shall not be limited by the amount of the required insurance coverage.

Not more frequently than once every five years, at such times as the parties' respective policies are subject to renewal, KJ or TPW may request reasonable changes to the insurance requirements set forth herein to reflect then-current risk management practices in the railroad industry and underwriting practices and conditions in the insurance industry.

6. CONSTRUCTION, INSTALLATION, OWNERSHIP AND MAINTENANCE OF CONNECTING TRACKS, SIGNALS AND COMMUNICATIONS.

(A) In the event any additional connecting track and related signals, telephones, telephone boxes, other communications facilities and appurtenances are required to permit the entrance to or exit from the Joint Trackage by the trains, locomotives, hi-rail vehicles, cabooses, cars and work or wreck equipment, of TPW, that part of said connecting track as shall lie on the right of way of KJ and all of said related signals, telephones, telephone boxes, other communications facilities and appurtenances shall be constructed or installed and thereafter maintained, repaired and renewed by KJ, and the costs and expenses of such facilities and appurtenances (the "Additional Facilities") shall be borne equally by the parties. KJ shall obtain TPW's concurrence with the scope and cost of Additional Facilities before constructing or installing such facilities, which shall not be unreasonably withheld. The balance of said connecting track shall be constructed, maintained, repaired and renewed by TPW at its sole cost and expense.

(B) The ownership of said Additional Facilities shall be vested in the party constructing or installing same.

(C) The term "costs and expenses", as used herein, shall include any taxes or assessments, general or special, levied by any governmental agency or entity because of the existence of any Additional Facilities so constructed or installed.

(D) The normal position of any connecting track switch shall be for continuous movement over the mainline of the Joint Trackage by the trains of KJ, and TPW's employees when entering and leaving the Joint Trackage shall unlock and open said switch and after movement of TPW's train through said switch has been completed, same shall be relined to normal position and securely locked by said employees of TPW.

(E) After the Effective Date, in the event any crossings or crossing protection devices along the Joint Trackage are expanded or upgraded following any governmental agency request, any costs or expenses not borne by such governmental agency, excluding overhead, shall be borne equally by KJ and TPW. KJ shall obtain TPW's concurrence with the scope and cost of

any such expansions or upgrades before performing such expansions or upgrades, which shall not be unreasonably withheld.

7. OPERATION AND MAINTENANCE OF JOINT TRACKAGE.

(A) The management, operation, maintenance, repair and renewal of the Joint Trackage shall be at the sole cost and expense, and under the exclusive direction and control, of KJ, which shall be bound to use only reasonable and customary care, skill and diligence in such management, operation, maintenance, repair and renewal, but in any event shall maintain the Joint Trackage to at least FRA Class 1 Track Safety Standards. TPW shall not, by reason of any defect therein or by reason of the failure or neglect on the part of KJ to repair any such defect or by reason of the failure or neglect of KJ to properly operate the same, have or make against KJ any claim or demand for any loss, damage, injury, liability, fine, penalty, cost or expense, whatsoever, resulting from any such defect, neglect or failure, except to the extent KJ has failed to repair any defect within a reasonable amount of time after TPW has provided KJ prior written notice thereof. The parties shall undertake a joint inspection of the Joint Trackage on a monthly basis at times mutually agreed by the local transportation officers of each party.

(B) The management, operation, maintenance, repair and renewal of both legs of the TPW Portion of the WYE shall be at the sole cost and expense, and under the exclusive direction and control, of TPW, and the management, operation, maintenance, repair and renewal of both legs of the KJ Portion of the WYE (collectively with the TPW Portion of the WYE, the "WYE Trackage") and any crossings thereover shall be at the sole cost and expense, and under the exclusive direction and control, of KJ. Each of TPW and KJ, in respect of their respective portions of the WYE Trackage, shall be bound to use only reasonable and customary care, skill and diligence in such management, operation, maintenance, repair and renewal, but in any event shall maintain such portion of the WYE Trackage to at least FRA Class 1 Track Safety Standards. The other party shall not, by reason of any defect therein or by reason of the failure or neglect on the part of such party to repair any such defect or by reason of the failure or neglect of such party to properly operate the same, have or make against such party any claim or demand for any loss, damage, injury, liability, fine, penalty, cost or expense, whatsoever, resulting from any such defect, neglect or failure, except to the extent such party has failed to repair any defect within a reasonable amount of time after the other party has provided such party prior written notice thereof. The parties shall undertake a joint inspection of the WYE Trackage on a monthly basis at times mutually agreed by the local transportation officers of each party.

(C) If the use of the Joint Trackage and/or WYE Trackage shall at any time be interrupted, or traffic thereon or thereover be delayed for any cause, the party responsible for the maintenance thereof shall, subject to any condition of force majeure, use reasonable diligence to restore such trackage for the passage of trains of the other party thereover, but the other party shall not have or make any claim against such party for loss, damage, liability, fine, penalty, cost or expense of any kind caused by or resulting from such interruption or delay, unless such party fails to use such reasonable diligence to make such restoration.

(D) In the event any locomotive, car, or other rail vehicle of either party is derailed, disabled or damaged while being run or operated upon any of the Joint Trackage and/or WYE Trackage, the party responsible for the maintenance thereof shall pick up and remove same and the cost and expense thereof shall be assumed by the party derailed, disabled or damaged; provided, however, that the employees of the other party shall be permitted to rerail and/or remove its equipment if such can be done without a derrick, or other heavy machinery; provided,

further, that if it is a train of the party not responsible for the maintenance of the relevant trackage that derails due to a defect identified and notified to the other party previously pursuant to Section 7(A) or Section 7(B) above, then the party responsible for the maintenance thereof shall bear all such cost and expense referenced in this Section 7(D).

8. EXAMINATION OF TPW's EMPLOYEES.

(A) KJ shall not require pilots, except in the case of a new engineer, conductor, or both, not familiar with the Joint Trackage; provided, however, that TPW may train and qualify any new engineer or conductor with previously-qualified TPW engineers and/or conductors. TPW agrees to reimburse KJ for all expenses incurred by it for wages and incidentals in connection with furnishing such pilot service.

(B) All employees of TPW engaged in or connected with the operation of trains on and along the Joint Trackage shall be required to pass periodic examinations on the rules and regulations of KJ; provided, however, that upon the request of TPW, KJ shall qualify one or more of TPW's supervisory officers on said rules and regulations and such supervisory officer or officers so qualified may examine all employees of TPW engaged in or connected with the operation of trains on and along the Joint Trackage.

(C) In emergencies, an officer of KJ shall conduct such examinations of TPW's employees and in all such cases TPW shall pay therefor [REDACTED] for each group of employees or individual employee so examined. Such fee may be increased from time to time by [REDACTED]

[REDACTED]

9. SWITCH KEYS, RULE BOOKS AND TIMETABLES. KJ shall supply the employees of TPW with necessary books of rules, switch keys and KJ timetables, at KJ's cost; provided, however, that if replacements are needed due to actions or loss by TPW employees, TPW shall reimburse KJ for the cost and expense of such replacements.

10. RADIO EQUIPMENT AND OTHER DEVICES. Any and all radio communications equipment and other special devices, which in the reasonable judgment of KJ must be installed on the locomotives of TPW for the safe and efficient operation of the trains of the parties hereto upon and over the Joint Trackage, shall be so installed and thereafter maintained by and at the sole cost and expense of TPW. KJ hereby grants TPW authority to use KJ's radio frequency to notify KJ's dispatcher per its then current timetable.

11. COMPLIANCE WITH LAWS AND OTHER PUBLIC REQUIREMENTS. TPW, in respect to the use of the Joint Trackage and the operation of its trains, locomotives, hi-rail vehicles, cabooses, cars and work or wreck equipment and other rail vehicles thereon and thereover, shall comply with all applicable federal, state and local laws, rules, regulations, orders and other mandates ("Requirements"). TPW shall not be admitted to the Joint Trackage if it is not in compliance with such requirements. If any failure on the part of TPW to comply with said Requirements shall result in any fine, penalty, charge, cost or expense being imposed, assessed or levied on or against KJ, or any officer, director, employee, agent, parent, subsidiary, or affiliated entity of KJ, TPW shall promptly reimburse and indemnify KJ (or its officer, director, employee,

agent, parent, subsidiary, or affiliated entity) for such fine, penalty, charge, cost or expense, including any reasonable attorneys' fees incurred.

12. **ENVIRONMENTAL DISCLOSURE.** TPW shall immediately give KJ written notice of any and all incidents involving environmental damage or contamination caused by derailment or damage to any locomotive, car, or other rail vehicle in the care, custody or control of TPW while on or near the Joint Trackage. This includes, but is not limited to the spillage, leakage, seepage, or other release of toxic or hazardous chemicals or materials, radioactive material, flammables, explosives or petroleum products of any kind (including diesel fuel, gasoline, oil, etc.).

13. **ADMISSION OF OTHER RAILROADS.** KJ shall have the sole right to admit other tenants to the use of the Joint Trackage, or any part thereof, on such terms and conditions as it may deem proper; provided, however, that such admittance shall not deprive TPW of the reasonable and proper use of the Joint Trackage for the purposes herein granted; and further provided that nothing herein shall be construed to impair any existing right of UP to use the Joint Trackage.

14. **PAYMENT OF BILLS.** Except as otherwise provided in this Agreement, any bills or invoices rendered hereunder for any money due pursuant to the terms and conditions of this Agreement, shall be paid by the obligating party within [REDACTED] days after receipt thereof and said payment shall not be delayed for errors of ordinary character likely to occur in railroad accounts, the necessary corrections to be made in due course. In billing hereunder for such charges, as may arise under this Agreement, the party invoicing may add to labor and material costs of such party's overhead costs and reasonable equipment rental rates in effect at the time any work is performed.

15. **INSPECTION OF RECORDS.** The records of each party hereto, insofar as they relate to matters covered by this Agreement, shall be open at all reasonable times to inspection by the properly authorized representatives of the other party hereto.

16. **FORCE MAJEURE.** If either party is unable to fulfill its obligations hereunder due to flood, tornado, hurricane, earthquake, blizzard, ice storm, or other natural disaster; the actions of governmental or military authorities; strike; labor dispute; riot; civil disturbance; war, declared or undeclared; terrorism; criminal acts of third parties; or other cause beyond their control, such failure shall not be considered a default hereunder; provided that the party experiencing the force majeure shall act promptly and with reasonable diligence to overcome such force majeure and shall keep the other party informed as to its progress.

17. **DISCONTINUANCE/ABANDONMENT.**

(A) Subject to approval by any governmental authority having jurisdiction, TPW may discontinue its operation over the Joint Trackage and, in such case, this Agreement shall automatically terminate upon the date such discontinuance of service becomes effective.

(B) Subject to the approval of any governmental authority having jurisdiction, KJ may, at any time not less than [REDACTED] years after the Effective Date abandon the Joint Trackage and, in

such case, this Agreement shall automatically terminate upon the date such abandonment becomes effective; **provided, however**, that KJ shall give TPW at least [REDACTED] written notice of its intention to abandon and the right to purchase the Joint Trackage in accordance with 49 U.S.C. 10907(h).

18. LOSS AND DAMAGE DEFINED.

"Loss and Damage" shall mean without limitation all claims, suits, demands, judgments, damages, economic losses, and fines and penalties resulting from or arising out of any injuries, death, loss or damage, including any damage to the Joint Trackage and any damage to or destruction of the environment whatsoever, and all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation or arbitration. Loss and Damage shall further include the expense of clearing wrecked or derailed equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any third party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment. Loss and Damage shall be reduced by any amount actually recovered from third parties.

19. CLASSIFICATION OF EMPLOYEES AND EQUIPMENT.

For the purposes of allocating liability hereunder:

- i. All employees, and any machinery, equipment, tools or other property of either party hereto engaged in the construction, installation, maintenance, repair or renewal of any Additional Facilities as mentioned in Section 6, and the making of additions and betterments thereto, or retirements therefrom, shall be deemed to be the sole employees and sole equipment of the party performing such work; and
- ii. All employees, and any machinery, equipment, tools or other property of either party hereto engaged in the maintenance, repair or renewal of the portion of the Joint Trackage for which it is responsible therefor and for which pursuant to the terms of this Agreement are to be the sole cost and expense of one of the parties, shall be deemed to be sole employees and sole equipment of the party for whom said work is performed; and
- iii. All employees of KJ, while acting as pilots on TPW's trains shall, while so engaged, be deemed to be the sole employees of TPW; and
- iv. All employees, locomotives, cars, cabooses or other property of either party hereto, including cars and equipment in the care, custody or control of either party, and the lading contained therein or upon such equipment, while engaged in operating over or upon the Joint Trackage, or any part thereof, except as provided in sub-paragraphs (ii) and (iii) of this subsection, shall be deemed to be the sole employees, equipment and lading of such party.
- v. All employees, and any machinery, equipment, tools or other property of other tenants admitted by KJ, as provided for under Section 13, shall be

considered, as to the parties hereto only, to be the sole employees, machinery, equipment, tools and other property of KJ.

20. ALLOCATION OF LIABILITY.

The responsibility of the parties hereto, as between themselves, for Loss and Damage resulting from, arising out of, incidental to, or occurring in connection with the exercise of the rights granted in this Agreement, shall be borne and determined as follows:

(A) Whenever any Loss and Damage occurs with any of the trains, locomotives, hi-rail vehicles, cabooses, cars or equipment of, or in the account of TPW being involved, without any of the trains, locomotives, hi-rail vehicles, cabooses, cars, or equipment of, or in the account of KJ being involved, TPW shall assume all liabilities therefor and bear all costs and expenses in connection therewith, including all costs and expenses resulting from the clearing of any wrecks occurring on the Joint Trackage, and shall forever protect, defend, indemnify, and save harmless KJ and its parents, subsidiaries, affiliated entities, and their respective directors, officers, agents, employees, successors and permitted assigns, from and against all such liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any of such indemnitees.

(B) Whenever any Loss and Damage occurs with any of the trains, locomotives, hi-rail vehicles, cabooses, cars or equipment of, or in the account of KJ being involved, without any of the trains, locomotives, hi-rail vehicles, cabooses, cars, or equipment of, or in the account of TPW being involved, KJ shall assume all liabilities therefor and bear all costs and expenses in connection therewith, including all costs and expenses resulting from the clearing of any wrecks occurring on the Joint Trackage, and shall forever protect, defend, indemnify, and save harmless TPW and its parents, subsidiaries, affiliated entities, and their respective directors, officers, agents, employees, successors and permitted assigns from and against all such liabilities, costs, and expenses, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of any of such indemnitees.

(C) Whenever any Loss and Damage occurs with any of the trains, locomotives, hi-rail vehicles, cabooses, cars or equipment of, or in the account of both TPW and KJ being involved, then TPW and KJ shall each separately assume and bear all liabilities, costs and expenses for loss of and damage to its own trains, locomotives, hi-rail vehicles, cabooses, cars, including lading, and equipment operated by it and for injury to and death of each of its own respective officers, agents, and employees, and persons in its care and custody. All liabilities, costs, and expenses for injuries to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other properties, including the Joint Trackage, so occurring shall be borne equally by TPW and KJ, including all costs and expenses resulting from the clearing of any wrecks occurring on the Joint Trackage.

(D) Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for Loss and Damage caused by the acts or omission of any of that party's employees while under the influence of prohibited drugs or alcohol. An FRA positive test for prohibited drugs or an FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Subsection 20(D).

(E) In every case of death or injury suffered by an employee of either TPW or KJ, when compensation to such employee or employee's dependents is required to be paid under the Federal Employers' Liability Act ("FELA"), or any workmen's compensation, occupational disease, employer's liability, or similar law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(F) Each party hereto agrees to indemnify and hold harmless the other party hereto against any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of, or lawsuits brought by or on behalf of its own employees or by any of their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement and arising out of a party's operations hereunder. It is the intention of the parties hereto that each of them shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances or lawsuits filed by its own employees arising under it is collective bargaining agreements with its employees.

(G) THE INDEMNITIES PROVIDED IN THIS SECTION 20 ARE SPECIFICALLY MEANT TO INCLUDE INDEMNITY BY A PARTY FOR THE OTHER'S ORDINARY NEGLIGENCE, EVEN IF THE INJURY OR DAMAGE IS CAUSED ENTIRELY BY SUCH INDEMNIFIED PARTY'S ORDINARY NEGLIGENCE AND THERE IS NO NEGLIGENCE OR FAULT ON THE PART OF THE INDEMNIFYING PARTY.

21. MANNER OF SETTLING LOSS AND DAMAGE CLAIMS.

(A) Notwithstanding anything to the contrary contained in this Agreement, neither party shall have any claim against the other:

- (i) for any consequential, indirect, special, punitive or exemplary damages unless such consequential, indirect, special, punitive or exemplary damages are awarded to a third party, and are part of the indemnification due a party hereunder.
- (ii) for Loss and Damage which may occur to its rolling stock equipment or to such equipment in its possession, or to the contents of either, while on the Joint Trackage or any other track the joint use of which is contemplated hereunder, arising by reason of fire not started pursuant to an incident covered by Subsections (A), (B) or (C) of Section 20, whether such fire be due to the negligence of the other party or otherwise, or
- (iii) for Loss and Damage caused by or resulting from interruption of or delay to such party's business.

(B) If a claim is made involving joint liability of the parties hereto, the party hereto against whom such claim is made shall give prompt written notice thereof to the other party, and the party so notified shall be bound for its proportionate share of any settlement of such claim or expenses incident thereto, including attorneys' fees, expert fees and court costs in accordance

with the terms of this Agreement. If a claim is made against either party hereto which under this Agreement is not chargeable in whole or in part with the liability involved in such claim, such party shall notify immediately in writing such responsible party.

(C) All releases taken pursuant to the settlement of any and all claims involving joint liability shall include both parties, and copies thereof shall be furnished to each of them; provided no settlement of joint liability claims in excess of [REDACTED] shall be voluntarily made by either party without first having obtained in writing the consent of the other party.

(D) If a judgment is recovered against and satisfied by one party involving liability which should under this Agreement be borne entirely or partially by the other party, then all expenses of whatsoever nature, including court costs, attorney fees, and all other monies expended incidental to such claim (or judgment), shall be apportioned between the parties in strict accordance with the provisions of this Agreement, and the party against which such judgment is recovered shall be promptly reimbursed by the other party to the extent to which the latter is indebted under this Agreement.

(E) Neither party shall, however, be precluded by any judgment or decree, at law or in equity, from enforcing its rights under this Agreement against the other party unless it has had reasonable notice from such other party requiring it to appear in the action or suit and make defense thereto for its own account or jointly with the other party. If such notice shall have been given by one party to the other and the party receiving such notice shall have failed to appear to make defense, it shall be concluded by the judgment or decree in such suit.

(F) Reports of all injuries to or deaths of persons and loss or destruction of or damage to property shall be made in duplicate and a copy thereof furnished to each of the parties hereto.

(G) All claims and demands arising hereunder for injuries to or deaths of employees or for loss or destruction of or damage to property of either party hereto shall be investigated by the party hereto whose employee is injured or whose property is damaged, but in the event the employees of both parties hereto are injured, or the property of both parties is damaged, the representatives of each party hereto may conduct a joint investigation, or may agree among themselves as to which one of them shall make the investigation, and such representatives shall determine from time to time which one of the parties hereto shall investigate all other claims or demands arising hereto.

22. **DEFAULT.** It is understood and agreed between the parties hereto that if TPW defaults in the payment of any sum due hereunder, or otherwise fails to perform in accordance with this Agreement, KJ may, if such default is not corrected within [REDACTED] days after written notice, file suit for collection and/or specific performance, pursuant to Section 27. If TPW fails to pay or comply with any judgment or order entered, within [REDACTED] days after such judgment or order becomes final, KJ shall have the right to terminate this Agreement by written notice. It is further agreed that if TPW's default is of a nature that KJ reasonably believes constitutes an unreasonable danger to the safe operation of the Joint Trackage, KJ may bar TPW from entering the Joint Trackage, on and after the date of the notice of default, and until such dangerous condition(s) is corrected. If any default by TPW results in a suit by KJ, in addition to such other remedies as KJ may have, TPW shall pay interest on any sums due from the date of default, at the legal judgment rate, as well as KJ's attorney fees, court costs and other expenses.

23. **WAIVER OF BREACH.** The waiver by any party of the breach of any condition, covenant or provision herein contained shall in no way impair the right of the aggrieved party to avail itself of any subsequent breach, whether of the same or similar nature, or not, nor shall any failure or delay on the part of any party in exercising any right, power or remedy hereunder preclude any subsequent exercise thereof.

24. **CHOICE OF LAW; CHOICE OF FORUM; ARBITRATION.** This Agreement shall be construed and enforced in accordance with the Interstate Commerce Act, as amended, and the law of the State of Indiana, without regard for the principles of conflicts of laws. Subject to Section 30(B), any litigation arising out of or connected with this Agreement may be instituted and maintained in the U.S. District Court for the Central District of Illinois, or, if that Court lacks jurisdiction, the Circuit Court of Peoria County, Illinois, only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in those courts, and consent to service of process issued by such courts; provided, however, that any good faith dispute as to meaning or interpretation of this Agreement shall be submitted to a single disinterested arbitrator chosen by the parties, or, if they are unable to agree on an arbitrator, then an arbitrator chosen by the Chief Judge of the U.S. District Court for the Central District of Illinois. Arbitration shall be conducted pursuant to the Federal Arbitration Act. In the event an operating issue arises, or a matter of joint concern, or a new issue not covered hereunder, the parties agree to meet promptly and discuss such issue and make a good faith effort to resolve such issue prior to taking any legal or regulatory action.

25. **BINDING EFFECT AND ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties, and their respective officers, directors, employees, agents, attorneys, insurers, representatives, subsidiaries, affiliates, successors and assigns; provided, however, that no right or obligation hereunder may be assigned by either party, without the prior written consent of the other party hereto; and further provided that, if this Agreement is not in default, either party may fully, but not partially, assign it, to any common carrier, upon proper authority from the Surface Transportation Board, and with not less than thirty (30) days' written notice to the other party. This Agreement is intended solely for the benefit of the parties hereto and is not intended to create any rights in any third parties.

26. **SEVERABILITY AND SURVIVAL.** If any clause or provision of this Agreement shall be finally determined invalid, illegal or unenforceable by a Court of competent jurisdiction, then that clause or provision only shall be held inoperative, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect. The representations, indemnifications, and similar obligations of the parties are intended to, and shall, survive the termination or expiration of this Agreement, as to any liability or obligation which accrues prior to such termination or expiration.

27. **SPECIFIC PERFORMANCE.** The parties intend to effectuate each and every provision of this Agreement. Any failure by any party to perform any provision herein shall be grounds for injunctive relief and specific performance.

28. **CONSTRUCTION OF AGREEMENT.** This Agreement constitutes the entire agreement between the parties as to the subject matter covered herein, and supersedes any and all prior agreements, oral or written. No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing and manually signed by the parties, and specifying with particularity the nature and extent of such waiver, modification or amendment. This Agreement was negotiated by the parties, and shall not be construed for or against either party by virtue of the fact that one party or the other drafted any particular parts thereof. Unless otherwise expressly provided or unless the context requires otherwise, words importing the singular number shall mean and include the plural number, and vice versa. When the term "including" is used herein, it shall be construed to mean "including, but not limited to," or "including, without limitation," whether or not either such entire phrase is used.

29. **NOTICES.** All notices which may be or are required to be given or sent by any party pursuant to this Agreement shall be in writing and shall be deemed to have been properly given if sent by certified mail, return receipt requested to the parties at the following addresses:

TPW: Toledo, Peoria & Western Railway Corp.
200 Meridian Centre, Suite 270
Rochester, NY 14618
Attention: President
E-Mail: LegalNotices@gwrr.com

With copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel
E-Mail: LegalNotices@gwrr.com

KJ: Keokuk Junction Railway Co.
ATTN: President
5619 DTC Parkway, Suite 650
Greenwood Village, CO 80111

or such other address as the parties may from time to time give written notice of.

30. **EFFECTIVE DATE.**

(A) This Agreement shall take effect as of the Effective Date, and, subject to the rights of the parties to terminate it as provided herein, this Agreement shall remain in effect for a term of

[REDACTED]

(B) If during the term of this Agreement either party desires to renegotiate any provision of this Agreement due to either material changes in circumstances, changes in industry practices

or the reasonable belief that the terms hereof are resulting in significant economic hardship as a result of circumstances beyond the control of the suffering party, then such party shall furnish written notice requesting for modifications to this Agreement. In the event the parties cannot agree on the appropriate language to be reasonably consistent with industry practices, in such case, or relief of the hardship, then the suffering party may seek resolution of the dispute with the Surface Transportation Board or its successor ("STB"). If at that time, the STB no longer exists, then the arbitration provisions of Section 24 shall apply.

31. **KJ'S USE OF THE TPW PORTION OF THE WYE.** TPW grants to KJ the non-exclusive right to use the trackage on the TPW Portion of the WYE for the sole purpose of turning KJ's locomotives, including track inspection cars and work or wreck equipment, such use to include a portion of the terminus of the Mapleton Industrial Spur as reasonably necessary for KJ's locomotives and equipment to complete their turn in the southernmost switch of the WYE. Any loss of, damage to, or destruction of property whatsoever, or injury to or death of any person or persons whomsoever, resulting from KJ's use of the TPW Portion of the WYE and the Mapleton Industrial Spur owned by TPW shall be governed by Section 20 hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first appearing above.

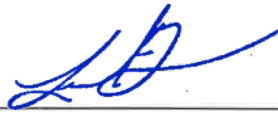
KEOKUK JUNCTION RAILWAY CO.

TOLEDO, PEORIA & WESTERN
RAILWAY CORP.

By 

Name: Ross Grantham

Its: chief operating officer

By 

Name: Leonard Wagner

Its: President

Appendix A

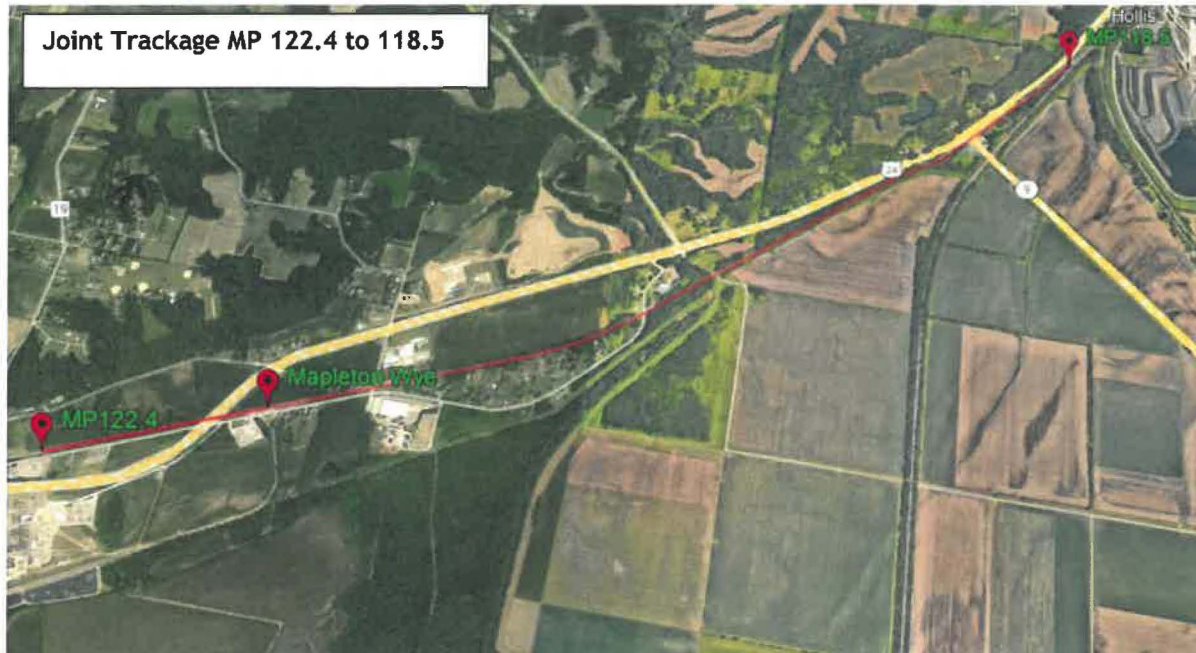


EXHIBIT C

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

Docket No. FD 36617

**TOLEDO, PEORIA & WESTERN RAILWAY CORP.
– TRACKAGE RIGHTS–
KEOKUK JUNCTION RAILWAY CO.**

Toledo, Peoria & Western Railway Corp. (“TPW”), a Class III railroad, files this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for TPW’s acquisition of overhead trackage rights over a line of railroad owned by Keokuk Junction Railway Co. (“KJ”) pursuant to a written trackage rights agreement between TPW and KJ. KJ has agreed to grant trackage rights to TPW over KJ track situated between the Union Pacific Railroad (“UP”) interchange at MP 118.5, near Hollis (a/k/a Sommer), Illinois, and MP 122.4, near Mapleton, Illinois to allow TPW to operate between the TPW-owned Mapleton Industrial Spur on one end and trackage rights that TPW holds over UP on the other end. Included in this grant are trackage rights to the portion of both legs of the wye track owned by KJ where the TPW-owned Mapleton Industrial Spur connects with the KJ track. The total distance of the track subject to the trackage rights agreement is approximately 3.9 miles. TPW intends to commence operations on or after the later of May 20 2022, or the effective date of the notice.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings