

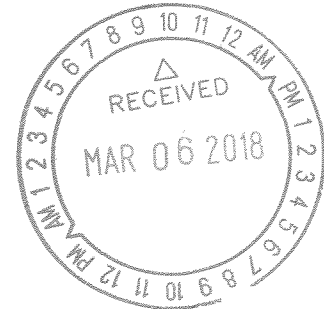
CLARK HILL

ENTERED
Office of Proceedings
March 6, 2018
Part of
Public Record

Eric M. Hocky
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March 1, 2018



VIA FEDEX

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20024

Re: Indiana Southern Railroad, LLC
- Amendment to Trackage Rights Exemption -
The Indiana Rail Road Company
STB Docket No. FD 36166

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Notice of Exemption of Indiana Southern Railroad, LLC ("ISRR"), together with an additional 20 copies of the maps. Also enclosed is our check in the amount of \$1300 representing the filing fee for this Notice.

Also enclosed for filing are the original and 10 copies of each of the following:

- (1) Motion of ISRR for Protective Order (expedited consideration requested).
- (2) Highly Confidential Amendment to Trackage Rights Agreement between ISRR and The Indiana Rail Road Company (filed under seal in a separate envelope).

Please time stamp the extra copy of this letter to indicate receipt of all of the foregoing, and return it to me in the stamped, self-addressed envelope provided for your convenience.

FEE RECEIVED
March 6, 2018
SURFACE
TRANSPORTATION BOARD
216993002

FILED
March 6, 2018
SURFACE
TRANSPORTATION BOARD

Cynthia T. Brown
March 1, 2018
Page 2

Please let me know if there are any questions regarding these filings. Thank you for your assistance.

Respectfully,

CLARK HILL PLC

A handwritten signature in dark ink, appearing to read "Eric M. Hocky", written over the printed name.

Eric M. Hocky

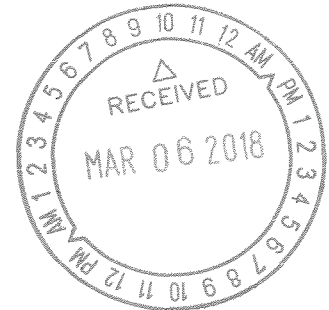
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Encls.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36166

**INDIANA SOUTHERN RAILROAD, LLC
– AMENDMENT TO TRACKAGE RIGHTS EXEMPTION –
THE INDIANA RAIL ROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION



ERIC M. HOCKY
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ehocky@clarkhill.com

Attorneys for
Indiana Southern Railroad, LLC

Dated: March 1, 2018

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36166



**INDIANA SOUTHERN RAILROAD, LLC
– AMENDMENT TO TRACKAGE RIGHTS EXEMPTION –
THE INDIANA RAIL ROAD COMPANY**

VERIFIED NOTICE OF EXEMPTION

Indiana Southern Railroad, LLC (“ISRR”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for ISRR’s acquisition of amended overhead trackage rights over a line of railroad owned by The Indiana Rail Road Company (“INRD”) pursuant to an amendment (the “Amendment”) to an existing trackage rights agreement (the “Base Agreement”) between ISRR and INRD.¹ The trackage rights relate to the line of railroad between INRD milepost 224.1 at or near Elnora, IN and INRD milepost 218.3 at or near Beehunter, IN, a distance of approximately 5.8 miles (the “Line”). A map of the Line is attached hereto as Exhibit A. The Amendment grants ISRR the right to construct one or more additional connections at the Beehunter end of the Line, to reinstall a crossing diamond there, and extends the term of the trackage rights.

¹ The Base Agreement was originally between Soo Line Railroad Company d/b/a CP Rail System and Indiana Southern Railroad, Inc., and was authorized by the ICC in October, 1993. *Indiana Southern Railroad, Inc. – Trackage Rights Exemption – Soo Line Railroad Co.*, ICC Finance Docket No. 32538 (served October 13, 1993), 58 FR 52977. ISRR is the successor to Indiana Southern Railroad, Inc., and INRD is the successor-in-interest to Soo Line Railroad Company. See *The Indiana Rail Road Co. – Acquisition – Soo Line Railroad Co.*, STB Finance Docket No. 34783 (served April 11, 2006).

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 amendment covered by this Notice is 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), ISRR 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

In return for ISRR making a contribution towards INRD's obligations under a federal Transportation Investment Generating Economic Recovery ("TIGER") grant to be used to improve the Line, the Amendment grants ISRR the right to construct one or more additional connections at the Beehunter end of the Line, to reinstall a crossing diamond there, and extends the term of the trackage rights. The Base Agreement provided ISRR with overhead trackage rights over the Line. The term of the Base Agreement was originally for 50 years from the commencement of operation, ending approximately September 30, 2043; the Amendment extends the term for 50 years from when ISRR made its contribution (on August 12, 2015) until August 12, 2065.² Because the Amendment does not make any material change in the trackage

² Although the Amendment was executed in May, 2013, it was contingent on INRD being awarded a TIGER grant and ISRR making a contribution towards INRD's costs after the project's completion. The grant was awarded in 2014, and ISRR made the required payment to INRD on August 12, 2015. The deferral of this Notice has not affected ISRR's operations under the Base Agreement, which would still have over 25 years remaining even under its initial term.

rights (which remain overhead, with the same end points), it is not clear that a notice of exemption is required to be filed. However, ISRR has chosen to do so in an abundance of caution.

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

Indiana Southern Railroad, LLC
4349 Easton Way
Suite 110
Columbus, OH 43219
(614) 479-1675

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
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500

(a)(1)(ii) Consummation Date

ISRR intends to commence operations under the trackage rights amendment on or after April 1, 2018, the effective date of this notice.

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

The trackage rights are being amended to allow ISRR to construct one or more additional connections at the Beehunter end of the Line, to reinstall a crossing diamond there, and to extend the term of the trackage rights by twenty-two years. In return, ISRR agreed to contribute towards INRD's capital costs incurred in performing improvements to the Line in connection with a TIGER grant.

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

ISRR operates in the State of Indiana, and the Line is also located in the State of Indiana.

(a)(6) Map

A map showing the Line is attached as Exhibit A. Twenty extra copies of the map are also being filed together with this Notice.

(a)(7)(ii) Agreement

A redacted public version of the Amendment is attached as Exhibit B. Applicant is filing a Motion for a Protective Order to protect the confidentiality of the commercial terms of the Amendment. A highly confidential version of the Amendment is being filed under seal.

Labor Protection

Applicant understands that any employees adversely affected by the amended trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

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, ISRR requests that the Board issue a notice of exemption for the amended trackage rights that are the subject of this Notice.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Attorneys for
Indiana Southern Railroad, LLC

Dated: March 1, 2018

VERIFICATION

I, Martin A. Pohlod, verify under penalty of perjury that I am authorized to make this verification on behalf of the Indiana Southern Railroad, LLC, and that the information included in the foregoing Notice of Exemption is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Martin A. Pohlod", written over a horizontal line.

Martin A. Pohlod
President

Dated: February 28, 2018

EXHIBIT A

MAP

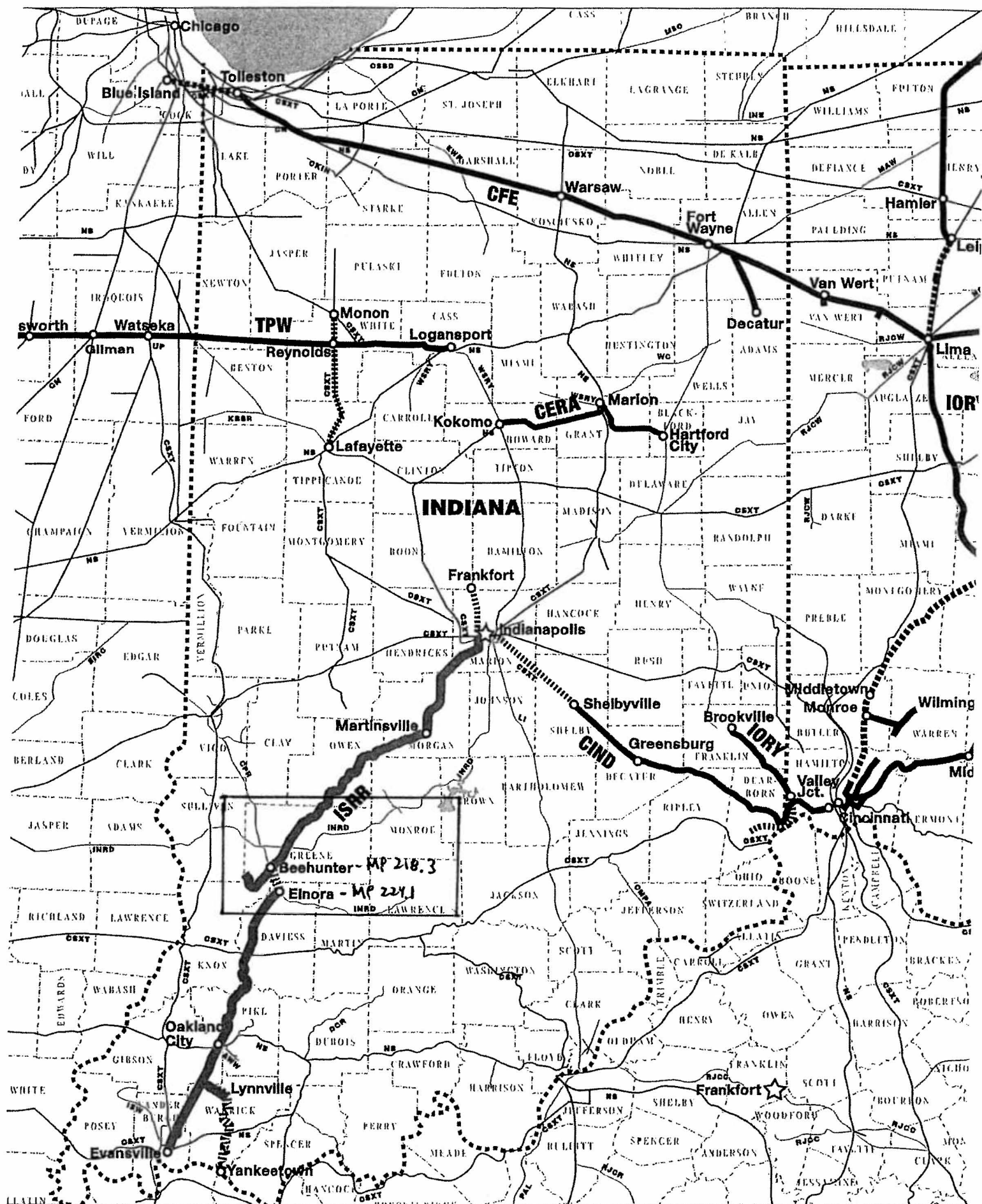


EXHIBIT B

AMENDMENT TO TRACKAGE RIGHTS AGREEMENT

Amendment to Trackage Rights Agreement

This Amendment to that certain Trackage Rights Agreement made by and between The Indiana Rail Road Company, as successor-in-interest to the Soo Line Railroad Company d/b/a CP Rail System, ("INRD") and Indiana Southern Railroad, LLC, f/k/a Indiana Southern Railroad, Inc. ("ISRR") dated April 15, 1993 (the "Agreement").

Recitals

WHEREAS, the Agreement provides that ISRR has trackage rights over a rail line owned by INRD between Beehunter, IN and Elnora, Indiana (the "Subject Trackage"); and

WHEREAS, INRD has applied for funding from the TIGER Discretionary Grants pursuant to the Full-Year Continuing Appropriations Act, 2013 (Pub. L. 113-6, March 26, 2013) (the "Grant") in order to rehabilitate and improve that certain bridge located at MP [221.79] on the Subject Trackage to accommodate loaded rail cars weighing 286,000 pounds and traveling at 25 miles per hour, estimated cost ~~XXXXXXXXXX~~ (the "Project"); and

WHEREAS, ISRR and INRD desire to amend the Agreement for the purpose of, *inter alia*, extending its term and establishing terms and conditions for their joint participation in the matching funding requirement in the event INRD is able to obtain the Grant.

ACCORDINGLY, for the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This Amendment is expressly conditioned on INRD obtaining the Grant. If the Grant is not awarded to INRD by no later than December 31, 2014, then this Amendment shall be void and unenforceable.
2. ISRR agrees to provide information and other support to INRD as reasonably necessary in the application process.
3. In the event the Grant is awarded to INRD, after completion of the Project, ISRR agrees to reimburse INRD ~~XXXXXXXXXX~~ toward any matching requirement (the "Contribution Payment"), payment due no later than 30 days after the completion date. INRD agrees to pay the balance of any matching requirement required by the terms of the Grant.
4. The Project will be managed by INRD, who will either contract for the work or perform the work using its own forces in accordance with the Grant provisions.
5. In exchange for ISRR's obligation in Paragraph 3 above, the parties agree to amend the following clauses in the Agreement:
 - a. Section 1.1. is clarified such that the definition of "Subject Trackage" includes any and all bridges, tunnels, approaches or other structures necessary for the support and operation of the Subject Trackage.

- b. The first paragraph of Section 2.1 of the Agreement is referenced as subparagraph (a) and Section 2.1 is supplemented with the following subparagraph (b):

"(b) Notwithstanding subsection (a) above, INRD agrees to permit ISRR to construct one or more additional connections in any quadrant at Beehunter and reinstall the crossing diamond if ISRR deems such construction and reinstallation is necessary to support current or future rail operations, at ISRR's election. Any plans, designs or surveys prepared by ISRR shall be submitted to INRD's designated engineer for approval prior to construction by ISRR, such approval not to be unreasonably withheld, conditioned or delayed. Any and all construction of such connection(s) shall be at ISRR's sole expense. After completion of the construction, such connection(s) shall become part of the Subject Trackage and owned by INRD.

- c. The first paragraph of Section 2.4 of the Agreement is amended by deleting "268,000" in the second sentence and substituting "286,000". Further, such first paragraph is referenced as subparagraph (a) and Section 2.4 is supplemented with the following subparagraph (b):

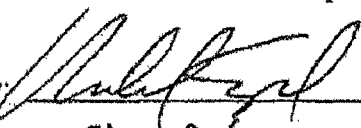
"(b) If INRD fails to maintain the Subject Trackage in accordance with the standards in Section 2.4(a) above such that the Subject Trackage cannot either support 286,000 pounds gross rail load per car or allow ISRR's trains to travel at 25 miles per hour on the Subject Trackage, then ISRR shall give INRD written notice that such deficiency must be corrected within thirty (30) days. Notwithstanding INRD's exclusive right to maintain the Subject Trackage in Section 2.1, if INRD fails to correct the deficiency or, if such corrections cannot reasonably be completed within said thirty-day period, INRD fails to (i) commence such corrections within said thirty-day period and (ii) continues to perform such work diligently thereafter until complete, then ISRR may perform the work necessary to correct the deficiency at INRD's expense and, at ISRR's sole option, ISRR may either offset such expense arising therefrom against any amount owed to INRD under Section 3 or deliver an invoice to INRD, which INRD shall pay within thirty (30) days after receipt thereof."

- d. Section 3.4 is deleted and replaced with the following "Except as specifically set forth in Section 2.4(b) herein, the amounts specified in this Section 3 shall be in addition to any and all other costs, expenses and charges that ISRR is required to bear and pay under the provisions of this Agreement and any other agreement between or among INRD and ISRR."
- e. The term of the Agreement in Section 8.2 shall be extended for fifty (50) years from the date ISRR makes the Contribution Payment. ISRR shall bear any expense to obtain any necessary approvals from the Surface Transportation Board to extend the term.

6. All other terms and conditions and provisions of the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed by the authorized representatives of INRD and ISRR as of the dates indicated below.

The Indiana Rail Road Company

By: 

Its: SR VP & CFO

Date: 5/29/13

Indiana Southern Railroad, LLC

By: 

Its: PRESIDENT

Date: 5-30-13

EXHIBIT C

CAPTION SUMMARY

**INDIANA SOUTHERN RAILROAD, LLC
– AMENDMENT TO TRACKAGE RIGHTS EXEMPTION –
THE INDIANA RAIL ROAD COMPANY**

The Indiana Rail Road Company (“INRD”) has agreed to grant amended overhead trackage rights to Indiana Southern Railroad, LLC (“ISRR”) over that portion of INRD’s rail line between INRD milepost 224.1 at or near Elnora, IN and INRD milepost 218.3 at or near Beehunter, IN, a distance of approximately 5.8 miles (the “Line”). ISRR currently has overhead trackage rights over the Line, and has been granted the right to construct one or more additional connections at the Beehunter end of the Line, to reinstall a crossing diamond there, and to extend the term of the trackage rights. ISRR intends to commence operations under the Amendment on or after April 1, 2018, 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 Zimmerman, Acting Director, Office of Proceedings