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February 4, 2019

247064

VIA HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
February 4, 2019
Part of
Public Record

Re: Paducah & Louisville Railway, Inc. – Trackage Rights Exemption
– CSX Transportation, Inc., FD 33763 (Sub-No. 1)

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and eleven copies of a verified notice of exemption ("Notice") for Paducah & Louisville Railway, Inc. ("P&L") to amend trackage rights P&L has over a line owned by CSX Transportation, Inc. pursuant to 49 C.F.R. § 1180.2(d)(7). Please acknowledge receipt and filing of the Notice by date stamping the enclosed eleventh copy and returning it to the courier for return to me.

Also accompanying the Notice and in accordance with 49 C.F.R. § 1002.2(f)(40)(4) is a filing fee check in the amount of \$1,300.00 and a draft federal register notice. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Sincerely,

William A. Mullins
Attorney for Paducah & Louisville Railway, Inc.

cc: J. Thomas Garrett

FILED
February 4, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
February 4, 2019
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33763 (Sub-No. 1)



**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

**J. Thomas Garrett
President and General Counsel
PADUCAH & LOUISVILLE RAILWAY, INC.
200 Clark Street
Paducah, KY 42003-2893
Tel: (270) 444-4430
Fax: (270) 444-4388**

**William A. Mullins
Crystal M. Zorbaugh
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Suite 300
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Tel: (202) 663-7820
Fax: (202) 663-7849
Attorneys for Paducah & Louisville Railway,
Inc.**

February 4, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



FD 33763 (Sub-No. 1)

**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRackage RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

Paducah & Louisville Railway, Inc. ("P&L"), a wholly owned subsidiary of P&L Transportation, Inc., submits this Notice of Exemption ("Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to allow P&L and CSX Transportation, Inc. ("CSXT") to amend trackage rights to expand use of such rights over an approximately 27.7-mile CSXT rail line for the movement of coal between the Dotiki mines, at or near milepost OMF 298.3, and a connection with P&L at or near milepost OJH 274.8. Traffic will move from the Dotiki mines to milepost OMB 275.9 then cross CSXT's Trident Interlocker at milepost OOH 276.5, then through CSXT's Madisonville Yard at Madisonville, KY, at milepost OHC 275.0, then to point of switch on East Diamond Lead, near milepost OHC 273.3, and then through CSXT's Cimarron Spur to the connection with P&L near milepost OHJ 274.8 (the "Dotiki Line"). Since 1999, P&L has operated under trackage rights over the Dotiki Line for the limited purpose of delivering coal to the Louisville Gas & Electric Cane Run plant in Louisville, KY and the Louisville Gas & Electric Mill Creek plant in Kosmosdale, KY (the "LGE Move"), via a P&L line that connects to the Dotiki Line.¹ CSXT and P&L have recently

¹ P&L has operated under restricted overhead trackage rights on the Dotiki Line since 1999. See Paducah & Louisville Railway, Inc. – Trackage Rights Exemption – CSX Transportation, Inc., FD 33763 (STB served June 23, 1999).

agreed to amend the trackage rights to allow P&L to also use trackage rights over the Dotiki Line to transport up to one million tons of coal annually to a P&L line that reaches the Ohio and Tennessee Rivers for the export market at the Calvert City, Four Rivers, or GRT Transfer Terminals (collectively the “Paducah Terminals”). Upon consummation of the proposed transaction, in addition to the LGE Move, P&L will also be able to move up to one million tons of coal annually over the Dotiki Line destined to the Paducah Terminals. The trackage rights granted by CSXT to P&L in this sub-docket proceeding will begin on March 6, 2019 (30 days after the filing of the Notice).

SECTION 1180.2 (d)(7)
GROUND FOR EXEMPTION

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 is exempt if the rights are: (i) based on written agreement(s), and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The trackage rights at issue in this proceeding are based upon a written agreement, a redacted version of which is attached hereto as Exhibit 1, and are not being sought in a responsive application in a rail consolidation proceeding.² Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include the information required in § 1180.6(a)(1)(i)-

² A redacted copy of the Agreement is attached as Exhibit 1. An unredacted version will be provided upon a relevant request and issuance of an appropriate protective order.

(iii), (a)(5)-(6), and (a)(7)(ii), indicate the level of labor protection to be imposed,³ and whether there is an interchange commitment.

SECTION 1180.6 (a)(1)(i)
BRIEF SUMMARY OF PROPOSED TRANSACTION

CSXT and P&L seek to amend the P&L trackage rights to permit P&L to transport up to one million tons of coal annually, in addition to the LGE Move, via trackage rights over an approximately 27.7-mile CSXT rail line for the movement of coal between the Dotiki mines, at or near milepost OMF 298.3, and a connection with P&L at or near milepost OJH 274.8. Traffic will move from the Dotiki mines to milepost OMB 275.9 then cross CSXT's Trident Interlocker at milepost OOH 276.5, then through CSXT's Madisonville Yard at Madisonville, KY, at milepost OHC 275.0, then to point of switch on East Diamond Lead, near milepost OHC 273.3, and then through CSXT's Cimarron Spur to the connection with P&L near milepost OHJ 274.8. P&L will then transport the coal over its own line to the Ohio and Tennessee Rivers for the export market at any of the Calvert City, Four Rivers, and GRT Transfer Terminals. Upon consummation of the proposed transaction, in addition to the LGE Move, P&L will also be able to move up to one million tons of coal annually over the Dotiki Line destined to the Paducah Terminals. The trackage rights granted by CSXT to P&L in this sub-docket proceeding will begin on March 6, 2019 (30 days after filing of the Notice).

Name, business address, and telephone number of Applicant(s):

Paducah & Louisville Railway, Inc.
200 Clark Street
Paducah, KY 42003
Tel: 270-444-4300

³ See 49 C.F.R. § 1180.4(g).

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins
Crystal M. Zorbaugh
BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW, Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

SECTION 1180.6 (a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

P&L intends to consummate this transaction on March 6, 2019 (the anticipated effective date of the transaction).

SECTION 1180.6 (a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION

The trackage rights over the Dotiki Line are being modified to allow P&L to transport up to one million tons of export coal annually over the Dotiki Line to the P&L Line and then to the Paducah Terminals in order to serve buyers who seek to buy export coal from the Dotiki mine.

SECTION 1180.6 (a)(5)
LIST OF STATES IN WHICH ANY PART OF THE PROPERTY OF EACH APPLICANT CARRIER IS SITUATED

P&L's operations and property are entirely within the state of Kentucky. P&L is one of three subsidiaries owned by P&L Transportation, Inc.⁴ CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina,

⁴ P&L Transportation, Inc. also owns Evansville Western Railway, Inc. ("EVWR") and Appalachian and Ohio Railroad, Inc. ("A&O"). EVWR's operations are in Indiana and Illinois. A&O's operations are in West Virginia.

Tennessee, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Quebec.

The trackage rights involved in this proceeding are located in the State of Kentucky.

SECTION 1180.6 (a)(6)
MAP

A map of the CSXT Line, which is the subject of this transaction, is attached hereto as Exhibit 2.

SECTION 1180.6 (a)(7)(ii)
AGREEMENT

A redacted version of the Agreement is attached as Exhibit 1. An unredacted version of the Agreement will be provided to any party of record requesting it and upon issuance of an appropriate protective order.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTION

Any employees who are adversely affected by the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in Norfolk and Western Railway Ry. Co. – Trackage Rights – BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry., Inc. -Lease and Operate, 360 I.C.C. 653 (1980).

SECTION 1180.4(g)(2)(i)
CAPTION SUMMARY

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

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. §§ 1105.6(c)(4) and 1105.8(b)(3), P&L's proposed acquisition of trackage rights is exempt from environmental reporting requirements, and historic preservation reporting requirements.

SECTION 1180.4(g)(4)
NO INTERCHANGE COMMITMENTS

P&L certifies that the proposed trackage rights do not involve a provision or agreement that may limit future interchange with a third-party connecting railroad.

Respectfully submitted,



J. Thomas Garrett
President and General Counsel
PADUCAH & LOUISVILLE RAILWAY,
INC.
200 Clark Street
Paducah, KY 42003-2893
Tel: (270) 444-4430
Fax: (270) 444-4388

William A. Mullins
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BAKER & MILLER PLLC
2401 Pennsylvania Ave., NW
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849

Attorneys for Paducah & Louisville Railway, Inc.

February 4, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33763 (Sub-No. 1)

**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 1

AGREEMENT (REDACTED)

FORM A - TRACKAGE RIGHTS ADDENDUM

Dotiki Mines

This Trackage Rights Addendum entered into this 21st day of January, 2019 by and between CSX TRANSPORTATION, INC. ("CSXT") and PADUCAH & LOUISVILLE RAILWAY, INC. ("PAL"), hereby constitutes an addendum to the Master Trackage Rights Agreement between CSXT and PAL dated May 29, 1997 governing trackage rights between the parties.

SECTION 1. DESCRIPTION

CSXT hereby grants to PAL, subject to the terms and conditions of the referenced Master Trackage Rights Agreement, and as further herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of railroad operated by CSXT (hereinafter referred to as "Subject Trackage"):

An approximately 27.7-mile CSXT rail line between the Dotiki mines, at or near milepost OMF-298.3 and the connection with PAL at a point near OHJ 274.8. The Subject Trackage runs from milepost OMF-298.3 to milepost OMB 275.9, then crossing CSXT's Trident Interlocker at Milepost OOH 276.5, then through CSXT's Madisonville Yard at Madisonville, KY, at milepost OHC 275.0, to point of switch on East Diamond Lead, milepost OHC 273.3, and then over CSXT's Cimarron Spur to the connection with PAL PAL at a point near OHJ 274.8.

SECTION 2. RESTRICTION ON USE:

- A. The Trackage Rights herein granted are for the sole purpose of PAL using same to handle movements of coal from the Dotiki mines, located on CSXT's Morganfield Branch, to the Calvert City Terminal and GRT Transfer Terminal located near Calvert City, and the Four Rivers Terminal in West Paducah, and to handle empties via the reverse route (the "Export Move"). In addition, PAL is authorized to handle movements of coal from Dotiki mines to the Louisville Gas & Electric Cane Run Plant in Louisville, KY, and the Louisville Gas & Electric Mill Creek Plant in Kosmosdale, KY, and to handle empties in the reverse route. PAL shall not perform any local freight service whatsoever at any point located on the Subject Trackage.
- B. On the Export Move, PAL is limited to transporting a maximum of 1,000,000 tons of coal per annum in the Export Move from Dotiki over the Subject Trackage.
- C. If at any time during the term of this Agreement, Dotiki loadings for the Export Move should be projected to increase, PAL shall so notify CSXT's Coal Development and

Intercarrier Management 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. If PAL 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.

SECTION 3. COMPENSATION

- A. The factor to be used in calculating payments to be made by PAL for the Trackage Rights governed by this Addendum shall be (hereinafter referred to as the "Current Charge")
- B. PAL will furnish the number of cars moved (loaded and empty) over Subject Trackage to Director-Intercarrier Administration, CSX Transportation, 500 Water Street, J801, Jacksonville, FL 32202, by the tenth day of each month for the previous months use of the Subject Trackage.
- C. PAL will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Addendum by (ii) the number of cars (loaded and empty), locomotives and caboose units moved by PAL with its own crews and power over the Subject Trackage by (iii) the miles of the Subject Trackage used. Each locomotive unit and caboose, for the purpose of this Addendum shall be counted as one (1) car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type code "S566" would equate to a five (5) car count as these type cars have five (5) wells capable of handling forty-foot (40') to fifty-foot (50') containers in each well be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Article 16 of the Master Trackage Rights Agreement.
- D. CSXT shall on or about the fifteenth (15th) day of each month render billing to PAL for PAL's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Addendum.

SECTION 4. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the

bill rendered for the month of July first following the "Effective Date" of this Addendum, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

- C. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under the terms of Article 16 of the Master Trackage Rights Agreement.
- D. At the option of either party hereto, the compensation provided for in this Addendum shall be open for renegotiation every five (5) years from the Effective Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Addendum, and the parties shall continue to be bound by the terms of compensation provided in this Addendum until the matter is settled or submitted to binding arbitration.

SECTION 5. TERM AND TERMINATION

- A. This Addendum shall become effective the latter of the date first above written, or when regulatory approval is received, the date of such approval following the expiration of any time periods required by the issuance of labor notices by CSXT ("Effective Date")
- B. This Addendum shall continue in full force and effect from the Effective Date and terminate simultaneously with the closure of Dotiki mines, unless terminated at an earlier date upon the mutual consent between the parties.
- C. Termination of this Addendum shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Addendum prior to termination thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to the Master Trackage Rights Agreement between the parties dated May 29, 1997 to be duly executed as of the date first above written.

Witness for CSXT:

CSX TRANSPORTATION, INC.

Joseph Linkin

By: Anthony DiDona

Name: Anthony DiDona

Title: Director Intercompany Mgmt

Witness for PAL:

PADUCAH & LOUISVILLE RAILWAY,
INC.

Susan Sacharnski

By: J. Thomas Garrett

Name: J. Thomas Garrett

Title: President

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33763 (Sub-No. 1)

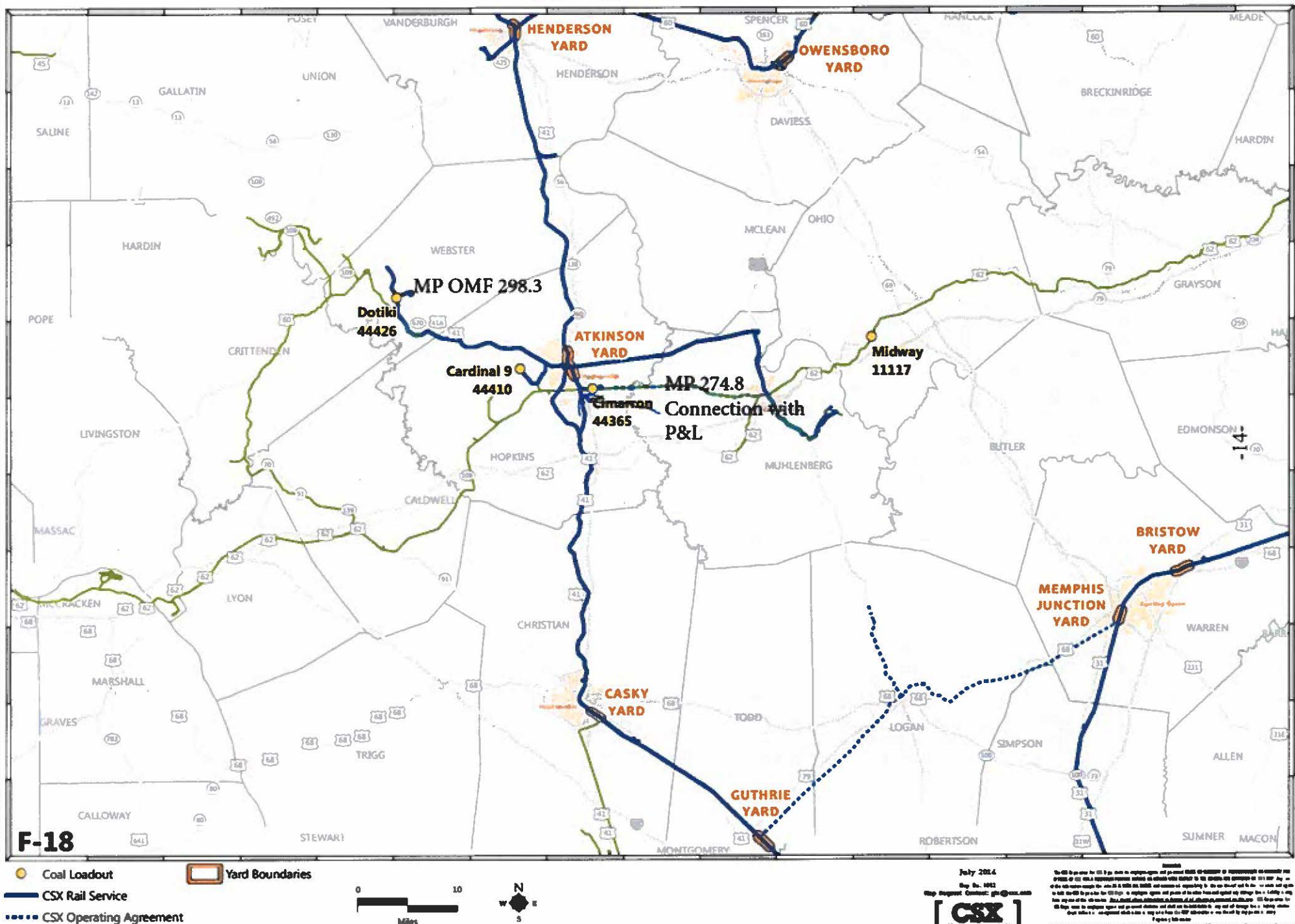
**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 2

MAP

WESTERN KENTUCKY COAL RATE DISTRICT



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33763 (Sub-No. 1)

**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

EXHIBIT 3

**DRAFT CAPTION SUMMARY
FEDERAL REGISTER NOTICE**

Surface Transportation Board
Notice of Exemption
Finance Docket No. FD 33763 (Sub-No. 1)

Paducah & Louisville Railway, Inc. – Trackage Rights Exemption –
CSX Transportation, Inc.

Paducah & Louisville Railway, Inc. ("P&L"), a wholly owned subsidiary of P&L Transportation, Inc., submits this Notice of Exemption ("Notice"), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to allow P&L and CSX Transportation, Inc. ("CSXT") to amend trackage rights to expand P&L's use of an approximately 27.7-mile CSXT rail line for the movement of coal between the Dotiki mines, at or near milepost OMF 298.3, and a connection with P&L at or near milepost OJH 274.8. Traffic will move from the Dotiki mines to milepost OMB 275.9 then cross CSXT's Trident Interlocker at milepost OOH 276.5, then through CSXT's Madisonville Yard at Madisonville, KY, at milepost OHC 275.0, then to point of switch on East Diamond Lead, near milepost OHC 273.3, and then through CSXT's Cimarron Spur to the connection with P&L near milepost OHJ 274.8. P&L will then transport the coal over its own line to the Ohio and Tennessee Rivers for the export market at any of the Calvert City, Four Rivers, and GRT Transfer Terminals. (the "Dotiki Line").¹ Since 1999, P&L has operated under trackage rights over the Dotiki Line for the limited purpose of delivering coal to the Louisville Gas & Electric Cane Run plant in Louisville, KY and the Louisville Gas & Electric Mill Creek plant in Kosmosdale, KY (the "LGE Move") via the P&L line that connects to the Dotiki Line. CSXT and P&L have recently agreed to amend the trackage rights so that in addition to the LGE Move, P&L will also be able to move

¹ P&L has held restricted overhead trackage rights on the Dotiki Line since 1999. See Paducah & Louisville Railway, Inc. – Trackage Rights Exemption – CSX Transportation, Inc., FD 33763 (STB served June 23, 1999).

up to one million tons of coal annually over the Dotiki Line destined to the Paducah Terminals.

The amended trackage rights granted by CSXT to P&L will be effective on March 6, 2019.

This Notice is filed pursuant to 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 automatically stay the transaction.

Dated: _____

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

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 33763 (Sub-No. 1)

**PADUCAH & LOUISVILLE RAILWAY, INC. -
TRACKAGE RIGHTS EXEMPTION – CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

VERIFICATION

VERIFICATION

I, J. Thomas Garrett, President and General Counsel for Paducah & Louisville Railway, Inc. ("P&L"), hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of P&L in connection with this proceeding before the Surface Transportation Board.

Executed this 4th day of February, 2019


J. Thomas Garrett
President and General Counsel
Paducah & Louisville Railway, Inc.