

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

December 6, 2017

VIA FEDERAL EXPRESS

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

244812
ENTERED
Office of Proceedings
December 7, 2017
Part of
Public Record

Re: **Docket No. FD 36068 (Sub-No. 2)**
The Indiana Rail Road Company -- Temporary
Trackage Rights Exemption -- CSX Transportation, Inc.

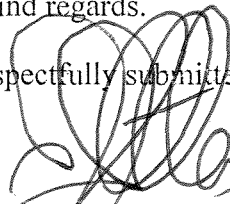
Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption of The Indiana Rail Road Company Pursuant to 49 C.F.R. § 1180.2(d)(8)**, dated December 6, 2017. A check in the amount of \$1,300.00, representing the appropriate fee for this filing, is attached.

One extra copy of this transmittal letter and of the Notice also are enclosed. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

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

Enclosures

FEE RECEIVED
December 7, 2017
SURFACE
TRANSPORTATION BOARD

FILED
December 7, 2017
SURFACE
TRANSPORTATION BOARD



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36038 (SUB-NO. 2)

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

**VERIFIED NOTICE OF EXEMPTION OF
THE INDIANA RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

**ATTORNEY FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: December 6, 2017



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36068 (SUB-NO. 2)

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



**VERIFIED NOTICE OF EXEMPTION OF
THE INDIANA RAIL ROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

The Indiana Rail Road Company ("INRD"), a Class II common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for its acquisition of limited, temporary trackage rights over a line of railroad of CSX Transportation, Inc. ("CSXT") between Sullivan and Oaktown, Indiana, a distance of approximately 14.55 miles. The proposed transaction will continue, for an additional year, a prior grant of temporary trackage rights from CSXT to INRD that expires on December 31, 2017.

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

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

Pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated as of August 1, 2009 and November 20, 2009, INRD holds trackage rights over CSXT's rail line from Sullivan to Carlisle and Oaktown, Indiana for the purpose of handling unit coal trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges. See The Indiana Rail Road Company -- Amended Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD

35137 (STB served May 22, 2008 and December 4, 2009); The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 35287 (STB served September 2, 2009); The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 35328 (STB served December 31, 2009).

Pursuant to a Supplemental Agreement No. 6 to the 2008 agreement, dated September 1, 2016, CSXT and INRD agreed to temporarily expand the existing Sullivan-Oakton trackage rights to allow INRD to handle unit coal trains to an additional off-line destination. See The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 36068 (STB served October 14, 2016); The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 36068 (Sub-No. 1) (STB served February 9, 2017). The expanded trackage rights are scheduled to expire on December 31, 2017.

CSXT and INRD have now agreed to extend the expanded trackage rights for an additional year, to December 31, 2018. Thus, pursuant to a written Amendment to Supplemental Agreement No. 6 to be entered into between CSXT and INRD, CSXT will grant INRD temporary, expanded trackage rights over CSXT's line of railroad between the connection with INRD at approximately CSXT Milepost OZA 204.5 at Sullivan, Indiana and the connection with trackage serving the Oaktown Mine at approximately CSXT Milepost OZA 219.05 at Oaktown, Indiana, a distance of approximately 14.55 miles, for the sole purpose of handling loaded and empty unit coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Kentucky in interline service with other rail carriers. Pursuant to 49 C.F.R. 1180.2(d)(8), the temporary trackage rights will expire on December 31, 2018. See Railroad

Consolidation Procedures, 6 S.T.B. 910 (2003).¹ Upon expiration of the temporary trackage rights, INRD's underlying trackage rights as authorized in Docket Nos. FD 35137, 35287 and 35328 will remain in place.

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

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

The Indiana Rail Road Company
8888 Keystone Crossing
Suite 1600
Indianapolis, Indiana 46240
(317) 262-5140

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

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1508

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

INRD intends to consummate the exemption authority proposed in this notice on January 6, 2018.

¹ The initial 2016 grant of temporary trackage rights to INRD did not qualify for the Section 1180.2(d)(8) class exemption because the duration of those rights was greater than one year. The temporary trackage rights do not permit INRD to conduct any local service between Sullivan and the connection with the mine trackage at Oakton and are considered overhead rights by the parties.

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

The proposed temporary trackage rights will permit INRD to continue to handle, for a limited period of time, unit coal train traffic from the Oaktown mine to an additional destination not currently permitted by INRD's existing trackage rights over the CSXT line. INRD will be allowed to handle up to one loaded unit coal train per week pursuant to the temporary trackage rights.

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

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

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

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

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

A draft of the Amendment to Supplemental Agreement No. 6 to be entered into between CSXT and INRD is attached hereto as Exhibit 2. INRD will submit a finalized version of the Amendment within ten days of its execution. Copies of the underlying trackage rights agreement dated as of May 15, 2008 between CSXT and INRD and prior supplemental

agreements dated August 1, 2009, November 20, 2009 and September 1, 2016 were previously submitted to the Board in Docket Nos. FD 35137, 35287, 35328 and 36068, respectively.

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

As a condition to this exemption, INRD agrees to the employee protective conditions established in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980). INRD's discontinuance of service upon expiration of the temporary trackage rights on December 31, 2018 will be subject to the employee protective conditions established in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). See Railroad Consolidation Procedures, 7 S.T.B. 587 (2004).

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

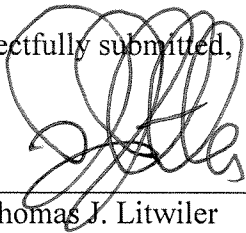
A caption summary of this transaction suitable for publication in the *Federal Register* is attached hereto as Exhibit 3.

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

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

Respectfully submitted,

By:


Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

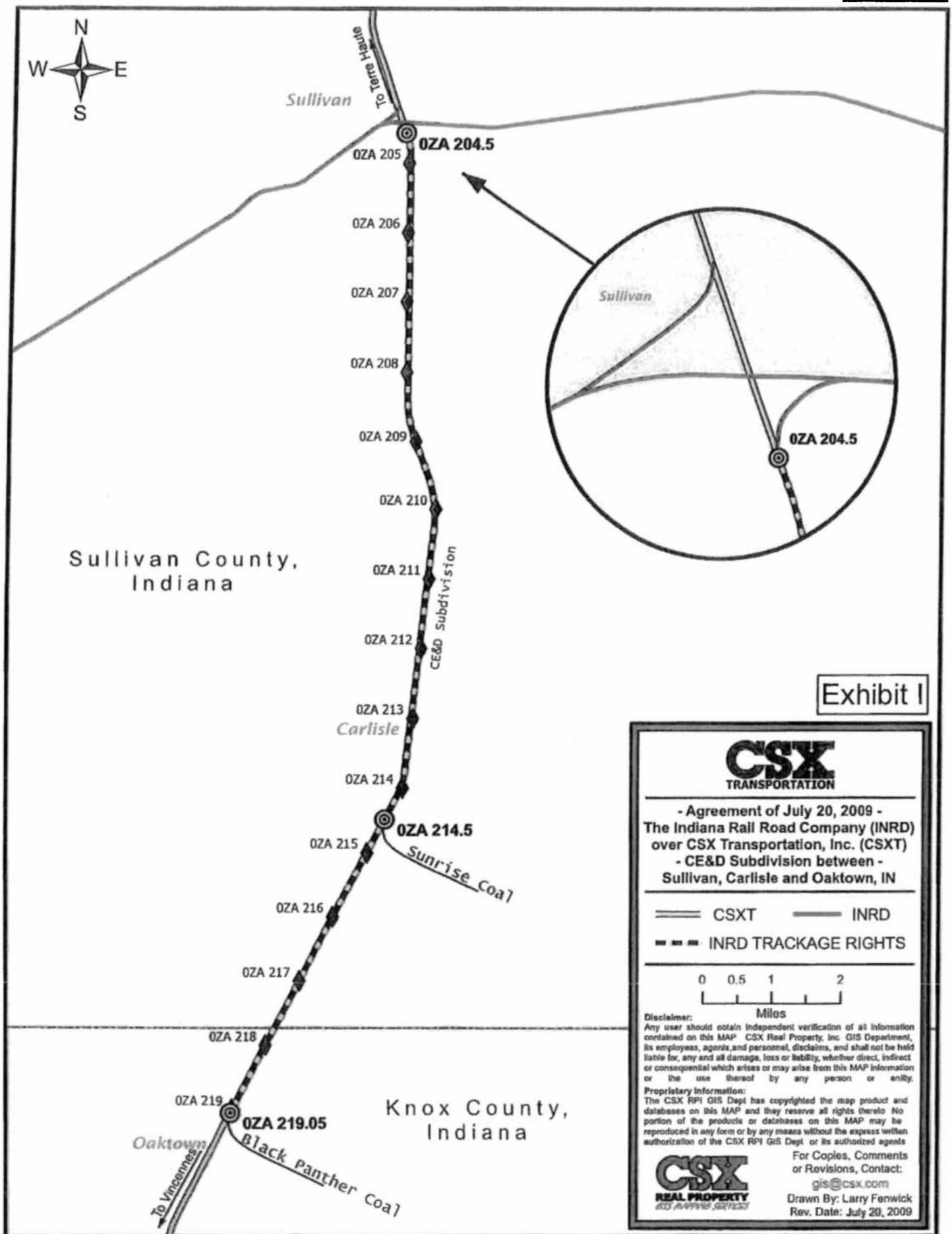
Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEY FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: December 6, 2017



AMENDMENT TO SUPPLEMENTAL AGREEMENT No. 6

THIS AMENDMENT TO SUPPLEMENTAL AGREEMENT No. 6 ("Amendment"), entered into as of this ____ day of December, 2017 between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT," and THE INDIANA RAIL ROAD COMPANY, hereinafter referred to as "INRD."

WITNESSETH:

WHEREAS, BY Agreement dated May 15, 2008 and supplemented August 1, 2009, November 20, 2009 and August 1, 2015 (as supplemented, the "2008 Agreement"), INRD has trackage rights over CSXT's CE&D Subdivision between the connection of CSXT with INRD at approximate CSXT milepost OZA 204.5 at Sullivan, IN and the connection of CSXT with trackage serving the Oaktown Mine at Oaktown, IN at approximate CSXT milepost OZA 219.05, a distance of approximately 14.55 miles (the "Subject Trackage"); and

WHEREAS, by Supplemental Agreement No. 6 to the 2008 Agreement, dated September 1, 2016, INRD acquired certain limited temporary trackage rights on the Subject Trackage for the sole purpose of handling unit coal trains to serve the Kentucky Utilities Generating Station in Harrodsburg, KY from the Oaktown Loadout Facility (the "Temporary Trackage Rights"); and

WHEREAS, pursuant to Section 2 of Supplemental Agreement No. 6, the Temporary Trackage Rights will terminate on December 31, 2017; and

WHEREAS, the Surface Transportation Board ("STB") approved the Temporary Trackage Rights pursuant to exemption in Docket No. FD 36068, and further granted INRD's petition to partially revoke exemption to permit the Temporary Trackage Rights to expire as of December 31, 2017; and

WHEREAS, the parties now desire to extend the Temporary Trackage Rights through December 31, 2018.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

Section 1. EXTENSION OF TEMPORARY TRACKAGE RIGHTS

The Temporary Trackage Rights granted pursuant to Supplemental Agreement No. 6 are extended until December 31, 2018. As so extended, the Temporary Trackage Rights shall continue to be governed by the terms and conditions of Supplemental Agreement No. 6, as amended by this Amendment.

Section 2. REGULATORY APPROVAL

INRD at its own cost and expense shall initiate and thereafter diligently pursue an appropriate notice of exemption at the STB to secure the prior approval of the STB for this Amendment (the "Trackage Rights Filing"), and shall, if necessary, concurrently initiate and thereafter diligently pursue a petition to partially revoke exemption with the STB to permit the Temporary Trackage Rights as extended to expire as of December 31, 2018 (the "Discontinuance"). The Trackage Rights Filing and the Discontinuance

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shall be governed by the provisions of Section 6 of Supplemental Agreement No. 6, except that any references therein to December 31, 2017 shall be considered a reference to December 31, 2018.

Section 3. PRIOR AGREEMENTS

Supplemental Agreement No. 6, except as amended by this Amendment, and the 2008 Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Amendment to Supplemental Agreement No. 6, in duplicate, as of the day and year first above written.

WITNESS

CSX TRANSPORTATION, INC.

By: _____

Name:

Name:

Title:

Title:

WITNESS

THE INDIANA RAIL ROAD COMPANY

By: _____

Name:

Name:

Title:

Title:

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36068 (SUB-NO. 2)

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

Pursuant to a written agreement to be entered into by the parties, CSX Transportation, Inc. ("CSXT") has agreed to grant limited, temporary trackage rights to The Indiana Rail Road Company ("INRD") over CSXT's line of railroad between the connection with INRD at approximately CSXT Milepost OZA 204.5 at Sullivan, Indiana and the connection with trackage serving the Oaktown Mine at approximately CSXT Milepost OZA 219.05 at Oaktown, Indiana, a distance of approximately 14.55 miles. INRD may utilize the temporary trackage rights for the sole purpose of handling loaded and empty unit coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Kentucky in interline service with other rail carriers.

The temporary trackage rights will be effective on January 6, 2018, and will expire by agreement of the parties on December 31, 2018. See 49 C.F.R. § 1180.2(d)(8). The proposed transaction will extend temporary trackage rights originally acquired by INRD in 2016 that are scheduled to expire on December 31, 2017. See The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 36068 (STB served October 14, 2016); The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc., Docket No. FD 36068 (Sub-No. 1) (STB served February 9, 2017).

As a condition to this exemption, any employee affected by the temporary trackage rights will be protected by the conditions imposed in Norfolk & Western Railway -- Trackage Rights -- Burlington Northern, Inc. 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway -- Lease & Operate -- California Western Railroad, 360 I.C.C. 653 (1980).

This notice is filed under 49 C.F.R. § 1180.2(d)(8). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by December 29, 2017 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36068 (Sub-No. 2), must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

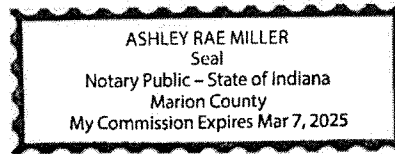
Decided: December __, 2017

By the Board, Rachel D. Campbell, Office of Proceedings.

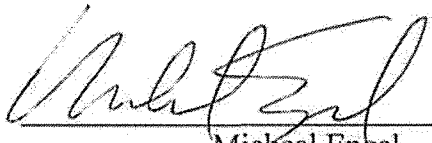
VERIFICATION

State of Indiana)
)
County of Marion)

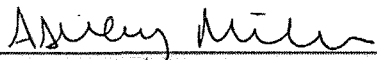
SS:



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


Micheal Engel

SUBSCRIBED AND SWORN TO
before me this 12 day
of December, 2017.



Notary Public

My Commission expires: 03/07/2025