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Office of the Secretary

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MAR 25 2002

Part of
Public Record

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March 22, 2002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, DC 20423

205032

FD-34187



RE: Finance Docket No. 34186, *Central Railroad Company of Indiana—Joint Relocation Project Exemption—CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed for filing are the original and 10 copies of a Verified Notice of Exemption, a \$1,700 filing fee, and three 3.5-inch IBM-compatible floppy diskettes with the file Notice of Exemption.doc. Also enclosed are 20 additional copies of the maps.

Please time and date stamp the extra copy of this letter and the Notice and return it with our messenger.

If you have any questions, please contact me.

Respectfully submitted,

Louis E. Gitomer

Enclosures

FILED

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SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

MAR 22 2002

SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. ~~34186~~ 34187

CENTRAL RAILROAD COMPANY OF INDIANA
--JOINT RELOCATION PROJECT EXEMPTION--
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION



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Attorneys for: CENTRAL RAILROAD
COMPANY OF INDIANA

Dated: March 22, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34186

CENTRAL RAILROAD COMPANY OF INDIANA
--JOINT RELOCATION PROJECT EXEMPTION--
CSX TRANSPORTATION, INC.

VERIFIED NOTICE OF EXEMPTION

Central Railroad Company of Indiana ("CIND") a Class III railroad, pursuant to 49 C.F.R. §§ 1180.2(d)(5) and 1180.4(g), files this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 11323 to permit CIND to participate in a joint relocation project with CSX Transportation, Inc. ("CSXT"), a Class I railroad, that will not disrupt service to shippers. The parties have entered into a written Agreement dated as of October 10, 2001 (the "Agreement").

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CIND submits the following information:

a. **1180.6(a)(1)(i).** A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

Central Railroad Company of Indiana, 497 Circle Freeway Drive, Suite 230, Cincinnati, OH 45246, (513) 860-1000, upon commencing trackage rights operations over CSX

Transportation, Inc., 500 Water Street, Jacksonville, FL 32202, (904) 359-3100, will abandon service over its one-mile line between milepost 24.6 at Dearborn Tower and milepost 25.6 at West Lawrenceburg Interlocking (the "Line").

CIND is abandoning the Line in order to convey the underlying real estate to the City of Lawrenceburg for a public development project. CSXT will grant CIND trackage rights over a portion of CSXT's Indiana Subdivision, milepost BC 21.54 at East Lawrenceburg, IN to milepost BC 23.3 at West Lawrenceburg, IN, a distance of about 1.7 miles (the "Lawrenceburg Trackage Rights"). CIND will also construct turnouts within the current railroad right-of-way from the CSXT track at milepost BC 22.3± to serve Seagram's Distillery, and at milepost BC22.9± to serve American Electric Power. The only other shipper served by CIND over the line being abandoned is Gibbco. Gibbco is located on property of American Electric Power ("AEP"). Gibbco will be able to load and unload on new track being constructed within the AEP facility in order to access CIND on its relocated track.

CIND owns and operates approximately 81 miles of rail line located between milepost 0.0, (Wood Street) at Cincinnati, OH, and milepost 81.0, at Mack, near Shelbyville, IN. CIND also has overhead trackage rights over the 76.2 miles of CSXT rail line located between milepost 81.0, at Shelbyville, and milepost 35.3, at Frankfort, IN. CIND also operates under trackage rights from CSXT pursuant to a February 9, 1996 agreement (the 1996 Agreement") from the connection of CIND on CSXT's connection track T-1415(D)(1) at Ownership Point (O.P.) 1+53 at North Bend, OH, near CSXT's milepost B.C. 15 and CSXT's connection with CIND on

CSXT's connection track T-2 at O.P. 1144+96.2 at Lawrenceburg, IN near CSXT's milepost 22, a distance of approximately seven miles (the "North Bend Trackage Rights").¹

The Agreement combines the terms of the North Bend Trackage Rights and the Lawrenceburg Trackage Rights into a single agreement.

Counsel to whom questions concerning the transaction can be addressed are: Gary A. Laakso, Esq., Vice President Regulatory Counsel, Saginaw Valley Railway Company, Inc., 5300 Broken Sound Boulevard N.W., Boca Raton, FL 33487, (561) 994-6015, and Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, D.C. 20005, (202) 638-3307.

b. **1180.6(a)(1)(ii).** The proposed time schedule for consummation of the proposed transaction.

CIND intends to consummate the joint relocation project with CSXT on March 29, 2002, or thereafter.

c. **1180.6(a)(1)(iii).** The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

CIND is cooperating with the City of Lawrenceburg in a public development project while continuing to serve its customers.

d. **1180.6(a)(5).** A list of the State(s) in which any part of the property of each applicant carrier is situated.

CIND operates in the States of Indiana and Ohio. The involved trackage rights are

¹ A Verified Notice of Exemption was filed for the North Bend Trackage Rights in *Central Railroad Company of Indiana—Trackage Rights Exemption—CSX Transportation, Inc.*, STB

located solely in the State of Indiana.

e. **1180.6(a)(6). Map (Exhibit 1).** Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

See Exhibit 1.

f. **1180.6(a)(7)(ii). Agreement (Exhibit 2).** Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

See Exhibit 2.

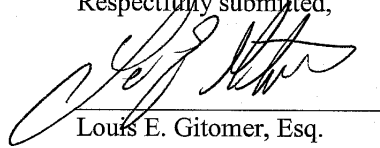
g. Labor Protection.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed 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*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), and any employees affected by the abandonment will be protected by the conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

h. Environmental and Historical documentation.

This transaction qualifies for classification under 49 C.F.R. §1105.6(c)(2) and thus neither an Environmental Assessment nor a Historic Report is required to be filed.

Respectfully submitted,



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Attorneys for: CENTRAL RAILROAD
COMPANY OF INDIANA

Dated: March 22, 2002

EXHIBIT 1-MAP



EXHIBIT 2-AGREEMENT

AGREEMENT

THIS AGREEMENT, entered into as of this 10th day of OCTOBER 2001, by and between CSX TRANSPORTATION, INC., a Virginia corporation, (hereinafter referred to as "Owner") and CENTRAL RAILROAD COMPANY OF INDIANA, an Indiana corporation, (hereinafter referred to as "User");

WITNESSETH:

WHEREAS, User and the City of Lawrenceburg (the "City") have entered into a Purchase/Sale Agreement whereby User shall convey certain real estate presently used for rail operating purposes to the City in order to facilitate a City public development project (the "Project"); and

WHEREAS, User currently enjoys trackage rights over Owner's Indiana Subdivision between North Bend, OH, and East Lawrenceburg, IN, under terms of Agreement dated February 9, 1996, (the "1996 Agreement"); and

WHEREAS, User's conveyance to the City precipitates the need for additional User's rights from Owner's Indiana Subdivision, Milepost (MP) BC 21.54 at East Lawrenceburg, to Owner's Indiana Subdivision (MP) BC 23.3 at West Lawrenceburg, IN, a distance of approximately 1.7 miles, and to construct two new turnouts in Owner's Indiana Subdivision main track at MP BC 22.3± and BC 22.9± to access the rail facilities of Seagram's and A.E.P., respectively, all as provided for in a separate Memorandum of Understanding dated April 5, 2001, among Owner, User and the City (the "MOU"); and

WHEREAS, The parties hereto desire to combine the existing and new trackage rights terms into a single agreement;

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

Article 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "1" (hereinafter referred to as the "Subject Trackage"):

Owner's Louisville Division, Indiana Subdivision, between connection with User on Owner's connection track T-1415D(1) at Ownership Point (O.P.) 1+53 at North Bend, OH, near Owner's Milepost (MP) BC 15, and Owner's main track MP BC 23.3 near A.E.P.'s Tanner's Creek generating station west of Lawrenceburg, IN, a distance of eight

miles approximately, via the aforesaid connection and main tracks, including any passing sidings required.

Article 2. TERMINATION OF PRIOR AGREEMENT

Upon effective date of this Agreement as provided in Article 21 of this Agreement, the 1996 Agreement shall be canceled and superceded in its entirety.

Article 3. USE OF SUBJECT TRACKAGE

- A. User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- B. Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purposes.
- C. Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- D. User shall have right to operate its trains in either direction over Subject Trackage.

Article 4. USER RESTRICTION ON USE

The Trackage Rights herein granted are granted for the sole purpose of User using same for bridge traffic between the terminals of Subject Trackage, and User shall not perform any local freight service at any point located on Subject Trackage with the following exceptions:

- A. User may enter and exit the Subject Trackage:
 - (i). Via a turnout to be constructed in Lawrenceburg, IN, near MP BC 22.3±, as provided in Article 11B hereof, for purpose of accessing User's trackage to serve the rail facilities of Seagram's; and
 - (ii). Via a turnout to be constructed in West Lawrenceburg, IN, near MP BC 22.9±, as provided in Article 11C hereof, for purpose of accessing the A.E.P. facility. Owner and User shall have joint and equal access to the facilities of A.E.P., or its successors, for any and all rail traffic; provided, however, that User shall have sole access for any movements of electrical generators or turbines for repair or

reconditioning for account of A.E.P., and consigned to A.E.P. facility served by the turnout.

- B. In addition, without the specific written permission of Owner, User shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor pursuant to any contract or agreement with any third party, handle over the Subject Trackage the trains, locomotives, EOT's, or cars of any such third party which in the normal course of business would not be considered the trains, locomotives, EOT's or cars of User.

Article 5. MISCELLANEOUS SPECIAL PROVISIONS

- A. User shall move only loaded and empty freight cars and locomotives on Subject Track. There shall be no operation by User of passenger trains, excursion trains or movements by User of any equipment related thereto.
- B. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.
- C. Procedures for qualification and occupancy of the Subject Trackage shall be arranged by the local supervision of each carrier. All control and usage shall be subject to the approval of Owner's representative or his designee.

Article 6. COMPENSATION

- A. The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be Thirty-two Cents (\$.32) per car mile (hereinafter referred to as the "Current Charge").
- B. User shall pay Owner a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 7 by (ii) the number of cars (loaded and empty), locomotive and EOT units moved by User with its own crews and power over the Subject Trackage by (iii) the miles of Subject Trackage used. For the purpose of this Agreement, each locomotive unit and EOT shall be counted as one 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" shall 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 wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Numbers.)
- C. User shall furnish to Owner, in care of General Manager-Inter-carrier Agreements, CSX Transportation, 500 Water Street, J801, Jacksonville, FL 32202, on or before the 10th of

each month, a statement of the number of locomotive units, EOT's, and loaded and empty cars operated over the Subject Trackage during the previous month. Based on this statement, Owner shall on or about the tenth day of the following month render billing to User for User's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

- D. Alternatively, User may furnish Owner all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure shall be required at the time the Association of American Railroads (AAR) defines the standard reporting procedures for trackage rights carriers. The carriers shall determine the minimal data requirements.

Article 7. 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 July 1st each year, commencing July 1, 2002, 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 (hereinafter referred to as "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 of the latest calendar year (2001 Index for the first annual adjustment) as related to the index for the previous calendar year (2000 Index for the first annual adjustment) and applying that percent to the Current Charge.
- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2000; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2001; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \frac{B - A}{A} = D$$

$$(2) (D \times C) + C = \text{revised Current Charge, effective July 1 of the year being revised.}$$

- D. 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 as provided hereinafter.

- E. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement 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 Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

Article 8. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 6, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

Article 9. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 16, User shall not by reason of failure or neglect on the part of Owner to maintain, repair or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.
- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

Article 10. INSURANCE

- A. During the term of this Agreement User agrees to procure and maintain at its sole cost and expense railroad operating and liability insurance, hereinafter called "Insurance", naming User as the insured and covering the liability assumed by it and its agents under the terms of this Agreement and by virtue of User's usage of Owner's trackage. Owner shall be listed as an additional insured. The Insurance shall include liability for foreign rolling stock and cargo in the care, custody or control of User and contain a contractual liability endorsement that shall specifically grant coverage for all liability assumed under this Agreement. The Insurance shall be in an amount not less than Five Million Dollars (\$5,000,000) combined single limit for personal injury and property damage per occurrence.
- B. The Insurance shall contain provisions obligating the insurer to provide Owner with notice of cancellation, material modification or non-renewal at least thirty (30) days prior to the effective date thereof.
- C. The Insurance shall be evidenced by a current certificate of insurance addressed to Owner as an additional insured (Risk Management Department J907; CSX Transportation, Inc.; 500 Water Street; Jacksonville, FL 32202) which certificate shall be subject to the prior approval of Owner's Risk Management Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to Owner.

Article 11. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- B. To continue User's service to the rail facilities of Seagram's, and pursuant to terms of the MOU, Owner shall construct, at User's sole cost and expense, a new turnout at approximately MP BC 22.3± on Owner's Indiana Subdivision, Lawrenceburg, IN. Owner shall perform all maintenance, at User's sole cost and expense.
- C. To facilitate joint service to A.E.P., or its successors, and pursuant to terms of the MOU, Owner shall construct, at User's sole cost and expense, a new turnout at approximately MP BC 22.9± on Owner's Indiana Subdivision, West Lawrenceburg, IN. Owner shall perform all maintenance, and Owner and User shall share equally in cost and expense for maintenance.
- D. Any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:

- (i). User or others shall furnish all labor and material and shall construct, maintain, repair and renew at User's sole cost and expense, such portions of the tracks located on the right-of-way of User or others which connect the respective lines of the parties hereto.
- (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew, at the sole cost and expense of User, such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto. Upon termination of this Agreement, Owner may at its option remove any portion(s) of trackage and appurtenances located on property of Owner, at the sole cost and expense of User. The salvage material removed shall be released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

Article 12. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- B. If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

Article 13. MANAGEMENT AND OPERATIONS

- A. User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon Owner or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of User to comply with its obligations in this regard.

- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner.
- C. User shall make such arrangements with Owner as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to Owner, upon receipt of bills therefor, any cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated.
- D. Owner may conduct an investigation at its option if a User's employee working on Owner's property is alleged to have violated Owner's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, Owner shall schedule the investigation and notify User's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the User's employee(s) of the investigation. Owner's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, and safety rules to User at no cost.
- E. If Owner conducts an investigation, Owner shall have the right to exclude from the Subject Trackage any employee of User except officers, determined by Owner, as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification shall be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If Owner conducts an investigation, its officer shall conduct the investigation, but an officer of User shall be present to assure compliance with User's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, Owner shall promptly furnish User with two copies of the transcript and a recommendation as to the discipline to be assessed. User's Transportation Officer shall

arrange to assess discipline, subject to receipt of Owner's recommended discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory.

- H. It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner shall be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.
- I. The trains, locomotives, cars and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of User shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.
- K. If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.
- L. In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the retained or additional employees not been provided.

Article 14. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in User's trains on the Subject Trackage shall be assumed by User and reported and paid by User.

Article 15. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 16 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to it.

Article 16. LIABILITY

The responsibility and liability between the parties for: (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties, then the involved party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both Owner and User, then: (i) each is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the loss is solely responsible.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.

- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.
- E. In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other 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. For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 11 hereof, all work performed by Owner shall be deemed performed for the sole benefit of User, and User shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal. User shall protect, indemnify, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which User is responsible.
- H. If any suit or action shall be brought against either party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.
- I. In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

Article 17. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706.
- C. In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, neither party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars (\$35,000).
- F. Each party agrees to indemnify and hold harmless the other party and its parent corporation, subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and 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 its own employees, either of which may be pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.
- G. It is understood that nothing in this Article 17 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 16.

Article 18. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by

Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

Article 19. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the arrangement; User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

Article 20. ABANDONMENT OF SUBJECT TRackage

- A. Notwithstanding the provisions of Article 21, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety 90 days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Subject Trackage, it shall submit an offer of financial assistance ("OFA") under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to User's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
 - (i). User fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (ii). User, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
 - (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or

- (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Subject Trackage, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application filed by Owner is granted but an application filed by User under Subsection (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Subject Trackage under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application for authority to abandon is denied, User shall withdraw any application it has filed under Subarticle C above.
- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 20 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

Article 21. TERM

- A. All of the following events must occur prior to this Agreement becoming effective. This Agreement shall be considered effective on the date that the latest of the following events occurs:
 - (i). The parties hereto fully execute this Agreement or, in the event Surface Transportation Board (STB) approval is required, User secures such STB approval; or

- (ii). Closure of two public at-grade road crossings designated as US DOT / AAR Crossing Inventory Numbers 152 489 U and 152 481 P on Owner's Louisville Service Lane, Indiana Subdivision, at Lawrenceburg, IN, between Owner's MP BC 22 and MP 23.3, is complete and curbed barriers installed adequate to perpetually prevent auto traffic from traveling on to and over Owner's property, pursuant to the terms of the MOU and all applicable local, state and federal laws; or
- (iii). User pays to Owner, to the attention of Mr. Michael Gilligan, Asset Management, CSX Transportation, Inc., 500 Water Street, J200, Jacksonville, FL 32202, the consideration of TWO HUNDRED ONE THOUSAND AND NO/100 DOLLARS (\$201,000.00), pursuant to the terms of the MOU; or
- (iv). Under the terms of separate construction agreement with the City and User, pursuant to terms of the MOU, Owner has completed the re-arrangements specified in Article 11 B, C and D.

and shall remain in full force for a period of thirty (30) years, during which time User shall have the right of termination upon not less than ninety (90) days' advance written notice to Owner. Upon not less than six (6) months and not more than twelve (12) months' advance written notice prior to the expiration of the initial term hereof (and prior to the expiration of the first thirty (30) year extension if this Agreement is so extended), User shall have the option to renew this Agreement for two (2) additional thirty (30) year terms, or one additional term in the case of renewal at the end of the first thirty (30) year extension, during which subsequent terms User shall have the right of termination upon not less than ninety (90) days' advance written notice as aforesaid.

- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

Article 22. ARBITRATION

Any irreconcilable dispute arising between the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties hereto. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

Article 23. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. User shall not transfer or assign this Agreement, or any of its rights, interests or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of Owner.

Article 24. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to Owner: General Manager-Intercarrier Agreements
CSX Transportation, Inc.
500 Water Street, J801
Jacksonville, FL 32202

If to User: General Manager
Central Railroad Company of Indiana
497 Circle Freeway Drive
Suite 230
Cincinnati, OH 45246

Vice President-Regulatory Council
RailAmerica
5300 Broken Sound Boulevard, N.W.
Boca Raton, FL 33487

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

Article 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.

- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- G. This Agreement is the result of mutual negotiations of the parties hereto, neither of who shall be considered the drafter for purposes of contract construction.
- H. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

Witness for Owner:

Patricia Cellier

CSX TRANSPORTATION, INC.

By: [Signature]
General Manager-Inter-carrier Agreements

Witness for User:

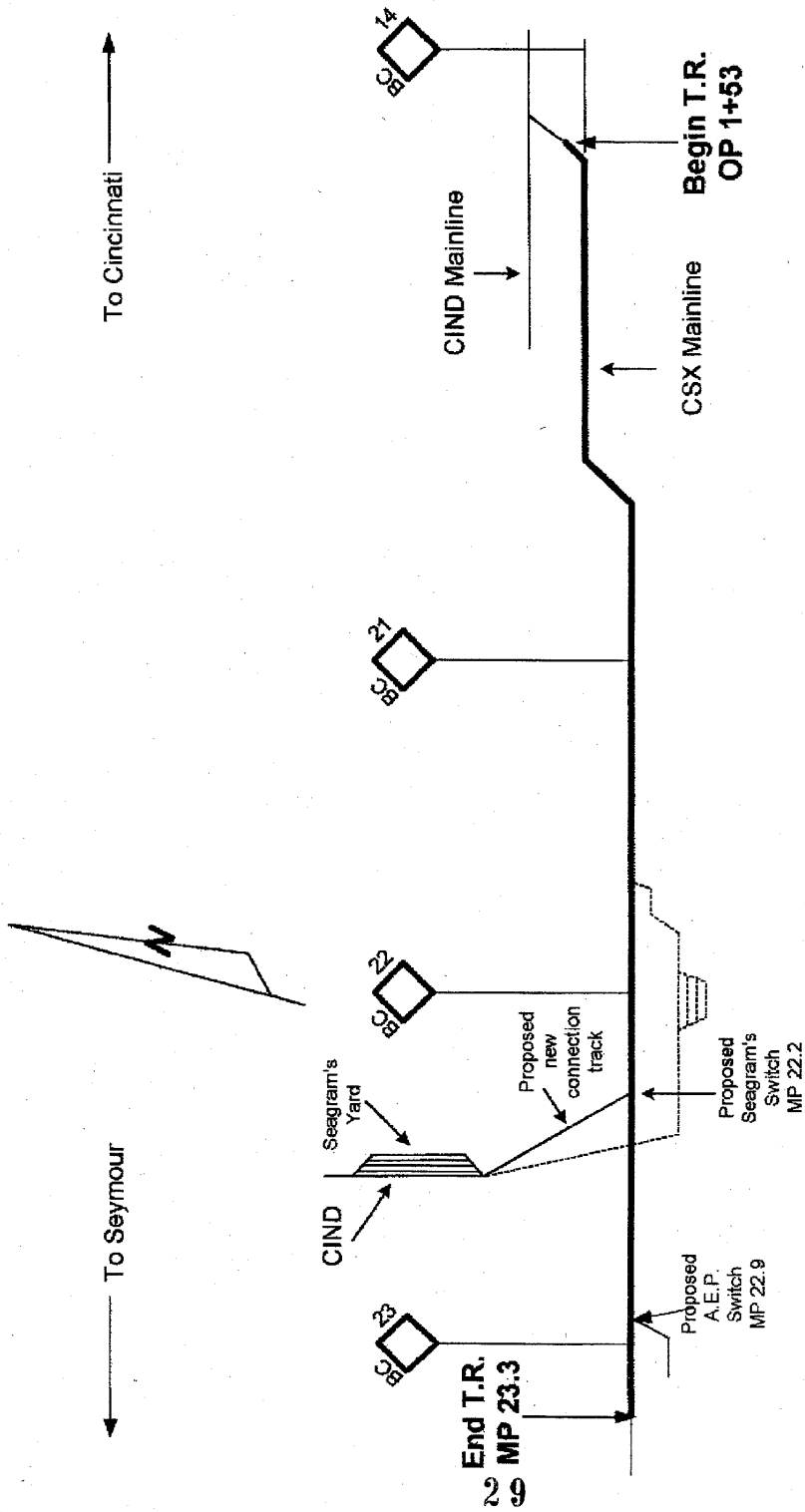
Calli S. Miffin

CENTRAL RAILROAD COMPANY
OF INDIANA

By: MC Burkart
Name: MC BURKART
Title: Regional Vice President

EXHIBIT 1

	CIND
	Trackage Rights
	North Bend, OH - Lawrenceburg, IN
	File Name: IN-Lawrenceburg-2
	Rev Date: August 24, 2001
Scale:	NONE



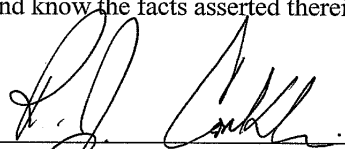
———— Subject Trackage

----- CIND Trackage to be Abandoned

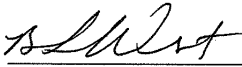
VERIFICATION

State of Florida)
)ss
County of Palm Beach)

I, R. Joseph Conklin, being duly sworn, depose and state that I am Senior Vice President of the Central Railroad Company of Indiana, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption, and know the facts asserted therein are true and accurate to the best of my knowledge.


R. Joseph Conklin

Subscribed and sworn to before me this 20th day of March 2002.



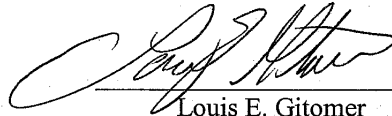
Notary Public

My Commission expires: Aug 20, 2004



CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Finance Docket 34186, *Central Railroad Company Of Indiana—Joint Relocation Project Exemption—CSX Transportation, Inc.*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governor, Public Service Commission, and Department of Transportation of the States of Indiana and Ohio.

A handwritten signature in cursive script, appearing to read "Louis E. Gitomer", is written over a horizontal line.

Louis E. Gitomer
March 22, 2002