

BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35685

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RAIL SWITCHING SERVICES, INC.  
- OPERATION EXEMPTION -  
LINE OF PEMISCOT COUNTY PORT AUTHORITY  
IN PEMISCOT COUNTY, MISSOURI

233190

ENTERED  
Office of Proceedings  
October 15, 2012  
Part of  
Public Record

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**VERIFIED NOTICE OF EXEMPTION**  
PURSUANT TO 49 CFR 1150.41

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NOTICE OF OPERATION OF RAIL LINES  
INFORMATION REQUIRED BY 49 CFR 1150.43

Daniel A. LaKemper, Esq.  
General Counsel  
Rail Switching Services, Inc.  
1318 S. Johanson Road  
Peoria, Illinois 61607  
Tel.: (309) 697-1400

Dated: October 12, 2012

FEE RECEIVED  
October 15, 2012  
SURFACE  
TRANSPORTATION BOARD

- 1 -

FILED  
October 15, 2012  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO.35685

RAIL SWITCHING SERVICES, INC.  
- OPERATION EXEMPTION-  
LINES OF PEMISCOT COUNTY PORT AUTHORITY  
IN PEMISCOT COUNTY, MISSOURI

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. §1150.41, et. seq., Rail Switching Services, Inc. ("RSS"), a non-carrier, hereby files this Verified Notice of Exemption to operate Pemiscot County Port Authority's rail line between the BNSF Railway at Milepost 212.32<sup>1</sup>, at Hayti, Missouri, and Milepost 217.22, at Pemiscot Port Harbor, on the Mississippi River between Hayti and Caruthersville, Missouri, a distance of approximately 4.9 miles in Pemiscot County, Missouri, as shown on the map attached hereto as Exhibit A (the "Line"). Based on projected revenues for the Lines, RSS expects to be a Class III rail carrier after consummation of the transaction proposed herein.

In accordance with the requirements of 49 C.F.R. §1150.43, RSS submits the following information:

**Name and Address of Applicant: 49 C.F.R. §1150.43(a)**

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

Rail Switching Services, Inc.  
1318 S. Johanson Road  
Peoria, IL 61607

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<sup>1</sup> Misidentified in the Construction Exemption as MP 213.32.

**Applicant's Representative: 49 C.F.R. §1150.43(b)**

The name, address and telephone number of the representative of the applicant who should receive correspondence is as follows:

Daniel A. LaKemper, General Counsel  
Rail Switching Services, Inc.  
1318 S. Johanson Road  
Peoria, Illinois 61607

**Statement Concerning Agreement: 49 C.F.R. §1150.43(c)**

RSS has a Rail Line Operating Agreement with the Pemiscot County Port Authority ("PCPA"), providing that RSS will provide all rail services on the Line, as a contract operator for PCPA. A copy of that Agreement is attached hereto as Exhibit D.

**Operation of the Property: 49 C.F.R. §1149.43(d)**

RSS will operate and provide all rail services on the Line. PCPA, as the common carrier, will remain responsible for all maintenance.

**Brief Summary of the Transaction: 49 C.F.R. §1150.43(e):**

RSS began performing contract switching services for PCPA in 2008. At the time, RSS was unaware of the fact that PCPA had obtained construction authority, and was a common carrier. RSS believed the track to be private industrial track, and, at the time, there were no active customers.

In fact, PCPA obtained authority from the Surface Transportation Board to construct the Line

in FD-34117, Served August 26, 3003 (Pemiscot County Port Authority – Construction Exemption – Pemiscot County, Missouri).

To date, however, RSS has handled only empty storage cars.

The current Agreement (Exhibit D) was entered into in February, 2012, with the expectation that customer traffic may develop, and (in Section 7) that if STB authority became necessary at some point in the future, RSS would obtain such authority (RSS was still under the misconception that the Line was private track). The Agreement provides (in Section 4) that RSS has exclusive use of the Line for all rail purposes.

At least one customer has located on the Line and is desirous of receiving loads from the BNSF interchange. In the course of discussions with PCPA, the customer, and BNSF (which was also under the misconception that the Line was private), it came to light that PCPA had obtained a construction exemption.

RSS is now filing as a contract operator for PCPA.

### **Other Information .**

- (1) The name and address of the railroad transferring the operating responsibility to the applicant:

Pemiscot County Port Authority  
111 East 3<sup>rd</sup> Street  
Caruthersville. MO 63830

- (2) The proposed time schedule for consummation of the transaction:

Consummation of this transaction will occur on or about November 15, 2012, or upon the effective date of this exemption, if later, and operations under this exemption

will begin thereafter.

- (3) The mileposts of the subject property:

The Line extends from Milepost 212.32, at Hayti, Missouri to Milepost 217.22, at the Pemiscot Port Harbor, on the Mississippi River between Hayti and Caruthersville, Missouri, a distance of approximately 4.9 miles in Pemiscot County, Missouri;

- (4) The total route miles to be operated:

The length of the mainline trackage of the Lines is approximately 4.9 miles.

**Map: 49 C.F.R. §1150.43(f):**

A map showing the Line and the surrounding trackage is attached as Exhibit A of this Notice.

**Certificate of Compliance: 49 C.F.R. §1150.43(g):**

A Certificate of Compliance with the provisions of 49 C.F.R. §1150.33(g) is attached as Exhibit B to this Notice.

**Environmental and Historic Preservation Data: 49 C.F.R. §1105:**

Under 49 C.F.R. §1105(c)(2), RSS's proposed acquisition and operation of the Line is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, **i.e.**, changes that exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5).

Under 49 C.F.R. §1105.8(b)(1), RSS's operation of the Line is also exempt from historic

preservation reporting requirements. The proposed operation is for the purpose of facilitating common carrier continued rail operations. Further Surface Transportation Board approval is required to discontinue or abandon service, and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. §1150.44:**

A caption summary in appropriate form is attached as Exhibit C to this Notice.

Pursuant to 49 USC §10902(d), no labor protection is required by the action described in this Notice. The Applicant certifies that the projected annual revenue on the Line is less than \$5 Million.

Respectfully submitted,



Daniel A. LaKemper, Esq.  
General Counsel  
Rail Switching Services, Inc.  
1318 S. Johanson Road  
Peoria, Illinois 61607  
Tel.: (309) 697-1400

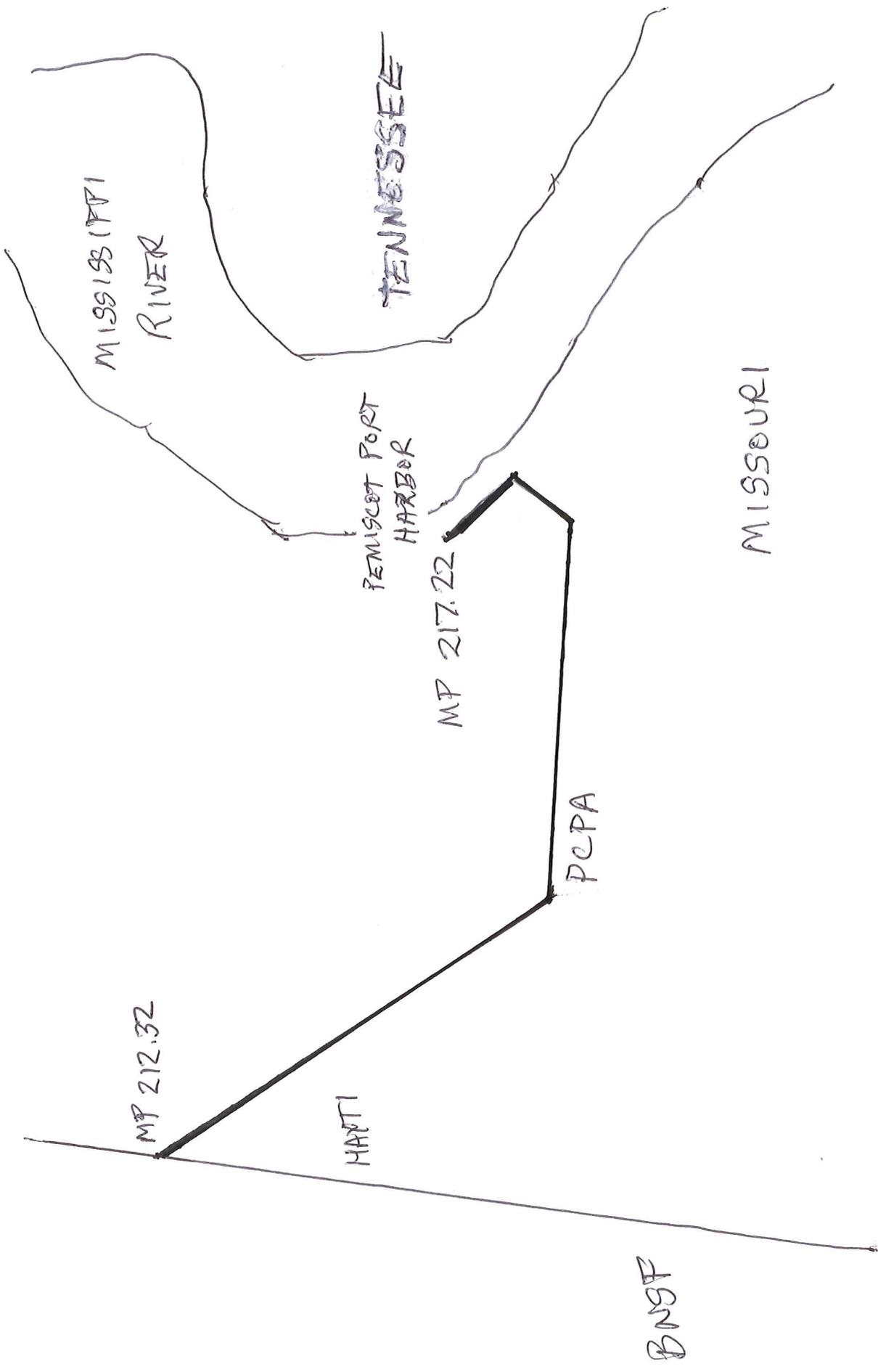


EXHIBIT A



SURFACE TRANSPORTATION BOARD

*Notice of Exemption*

Finance Docket No. 35685

RAIL SWITCHING SERVICES, INC.  
- OPERATION EXEMPTION-  
LINE OF PEMISCOT COUNTY PORT AUTHORITY  
IN PEMISCOT COUNTY, ILLINOIS

**VERIFIED NOTICE OF EXEMPTION**  
PURSUANT TO 49 CFR 1150.41

Rail Switching Services, Inc. (“RSS”) has filed a notice of exemption, pursuant to 49 CFR 1150.41, et. seq., Exempt Transactions, with the Surface Transportation Board, to operate the rail line owned by Pemiscot County Port Authority between BNSF Milepost 212.32, at Hayti, Missouri, and Milepost 217.22, at Pemiscot Port Harbor, on the Mississippi River, between Hayti and Caruthersville, Missouri, all in Pemiscot County, Missouri, a distance of approximately 4.9 miles.

RSS certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues on this Line will not exceed \$5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Petitions to revoke the exemption under 40 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 this exemption. Petitions to stay must be filed no later than November \_\_\_\_, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35685 must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington D.C. 20423-0001. In addition, one copy of each pleading must be served on Daniel A. LaKemper, Esq., General Counsel, Rail Switching Services, Inc., 1318 S. Johanson Road, Peoria, Illinois 61607, Telephone (309) 697-1400.

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided:

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

4-9-12

## RAIL LINE OPERATING AGREEMENT

THIS RAIL LINE OPERATING AGREEMENT ("Agreement") made and entered into this 29<sup>th</sup> day of February, 2012, by and between PIONEER RESOURCES, INC., an Iowa corporation, doing business as RAIL SWITCHING SERVICES, INC., ("RSSI"), with principal offices at 1318 S. Johanson Road, Peoria, Illinois 61607, and the PEMISCOT COUNTY PORT AUTHORITY ("Authority"), a governmental entity organized under the laws of the State of Missouri, with principal offices at 111 East 3<sup>rd</sup> Street, Caruthersville, Missouri 63830.

WHEREAS, the Authority owns a line of railroad (the "Line"), extending from the BNSF Railway ("BNSF") interchange at Hayti, Missouri, a distance of approximately five (5) miles in a generally easterly direction, which currently has no active customers; and,

WHEREAS, RSSI desires to provide non-common carrier contract switching service over said Line;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained it is agreed as follows:

1. **TERM.**

This Agreement shall become effective on March 01, 2012, and remain in effect for a period of two (2) years through February 28, 2014 ("Initial Term"), unless otherwise terminated as hereinafter provided. Moreover, this Agreement may be renewed for additional one-year periods ("Renewal Term or Terms") provided that RSSI is in compliance with this Agreement and provided that RSSI requests such a one-year extension during the 13<sup>th</sup> month (February) prior to the expiration date of the current (Initial or Renewal) term and provided that Authority grants that request.

2. **PAYMENTS BY RSSI.**

RSSI shall pay to Authority 35% of the gross operating revenue – that is storage revenue less any third party payable, ie. brokerage commissions, received by RSSI for railcar storage fees for railcars stored on the Line of the Authority, plus 35% of the gross revenue – that is switch revenue less any third party payable, ie. brokerage commissions, for railcar switching fees related to placing on and removing railcars from the Line of the Authority, payable monthly, within 10 days of the end of each calendar month. RSSI shall furnish the Authority with copies of monthly reports showing numbers of cars and dates cars were received from or delivered to BNSF, and copies of invoices showing numbers of cars billed and charges therefor (acknowledging that other information regarding RSSI's clients may be redacted) as verification for the monthly fees paid.

3. **LAWS AND REGULATIONS**

RSSI shall take all steps necessary to be in compliance with the provisions of all laws, statutes and regulations, including but not limited to the requirements of state and federal regulatory agencies applicable to its use of the Line. RSSI shall comply with all applicable Federal Railroad Administration ("FRA") regulations, and shall use engineers meeting all applicable FRA requirements.

4. **USE AND OPERATION.**

The Line shall be used by RSSI operating as a non-common carrier contract switcher under the provisions of the Interstate Commerce Act, as amended. RSSI shall have exclusive use of the Line for all rail purposes, provided, however, that 1) Authority may, to the extent that it does not unreasonably interfere with RSSI's use thereof, continue to extend the Line using its own forces and resources, and that 2) RSSI does not unreasonably hinder or interfere with the ability of Authority to allow customers to ship or receive products or materials on the Line. Such interference or hindrance shall constitute a violation of this Agreement, subject to the provisions of Paragraph 14. It is understood, that a customer may provide his own means of switching his industry, ie. a track mobile; but customers will not be allowed to retrieve from or deliver cars to the BNSF.

RSSI shall use that portion of the Line between the BNSF mainline and Missouri Highway J in Hayti for pick-up and delivery of cars to/from BNSF only, and shall only use that portion of the Line south and east of the Highway J crossing for car storage.

5. **MAINTENANCE AND REHABILITATION**

(a) RSSI and Authority will cooperate to ensure that brush and weed control are performed in accordance with FRA Standards.

(b) While responsibility for the maintenance of all grade crossings rests with the Authority, RSSI agrees to provide technical advice and other reasonable assistance in order to ensure their satisfactory condition.

6. **TAXES AND ASSESSMENTS**

Authority covenants that RSSI shall not be responsible for payment of any real estate taxes, special assessments, or other charges that may be levied or assessed against the Line; the Authority being exempt from such taxes, fees, assessments, or other charges by state law.

7. **CONDITIONS.**

The parties believe that since RSSI shall not be operating as a common carrier, no Surface Transportation Board ("STB") proceedings are required to effectuate this Agreement. If, however, any STB proceedings are required, this Agreement shall be contingent on RSSI's obtaining such authority, without the imposition of any material requirements that are unacceptable to either party. RSSI shall obtain such STB authority at its cost.

8. **RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION.**

No expiration or termination of this Agreement shall affect the liabilities or obligations of RSSI or Authority that may have accrued prior to such expiration or termination. Title to any improvements or betterments to the Line shall vest in the Authority, and RSSI shall have no claim therefor.

9. **RAIL CROSSINGS, LICENSES AND EASEMENTS.**

The Line is accepted by RSSI subject to those presently existing crossings, licenses, and easements, whether or not of record.

10. **NOTICES**

Except as provided in Section 8, all notices, demands, and requests required or permitted under this Agreement shall be in writing and shall be deemed properly served if delivered by hand to the party whose attention it is directed, or when received if sent postage prepaid by United States Certified Mail, return receipt requested, addressed as follows:

If intended for Authority: David P. Madison, Executive Director  
Pemiscot County Port Authority  
111 East 3<sup>rd</sup> Street  
Caruthersville, Missouri 63830

If intended for RSSI: J. Michael Carr, President  
Railroad Switching Services, Inc.  
1318 S. Johanson Road  
Peoria, Illinois 61607

Or at such other address or to such other party which any party entitled to receive notice hereunder may designate to the other party in writing. If in person, such shall be effective when received; if by mail, such shall be effective three business days after mailing.

11. **NON-ASSIGNMENT**

This Agreement shall be binding and inure to the benefit of the parties hereto, their respective successors and assigns, provided however, that neither RSSI nor Authority may, without the prior written consent of the other, assign this Agreement or any of its rights or obligations hereunder, provided, however, that RSSI's use of contractors or other third parties in the ordinary course of business to perform various functions on its behalf shall not be construed to be an assignment or partial assignment.

12. **INSURANCE**

RSSI shall procure, and maintain in force during the term of this Agreement, policies of

insurance providing railroad liability coverage (including applicable Workers' Compensation and/or Federal Employers' Liability Act coverage) in an amount of not less than \$10 million, and naming Authority as Additional Insured.

13. **MISCELLANEOUS**

This Agreement shall be governed by and construed according to the laws of the State of Missouri. The provisions of Section 8 shall survive the expiration, termination, or cancellation of this Agreement. When used herein, singular terms shall include the plural form, and vice versa, unless the context requires otherwise. This Agreement was negotiated by the parties, and shall not be construed in favor of or against either party by virtue of the fact that one or the other drafted or wrote any or all of its provisions. Any waiver, amendment or modification of this Agreement must be in writing and manually (not electronically) signed by the parties.

14. **VIOLATION AND DISPUTE RESOLUTION**

(a) In case of violation by RSSI of any provision of this Agreement, Authority may, at its option, after thirty (30) days' notice in writing to RSSI specifying the violation, and if RSSI does not commence diligently to remedy the violation within the thirty (30) day period, terminate this Agreement by written notice.

(b) Neither RSSI nor Authority shall be deemed in violation of this Agreement if they are unable to perform their obligations hereunder due to force majeure. Force Majeure shall include extreme weather conditions, natural disasters, strikes and labor disputes, acts of war, terrorism, criminal acts of third parties, fuel shortages, or any other condition beyond the reasonable control of the party(ies) which prevents said party(ies) from performing their obligations. The parties shall, nevertheless, take such actions as they reasonably can to mitigate such conditions, and shall use good faith in resuming the performance of their obligations after the event of force majeure has ended. Authority acknowledges that rail operations involve danger and that RSSI shall not be held in violation for exercising caution in such matters as resuming operations after a natural disaster.

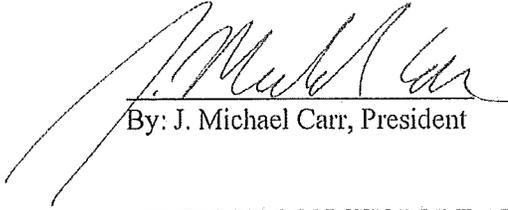
(c) In the event of a bona fide dispute as to the interpretation of any provision of this Agreement, upon which the parties cannot agree, the parties shall meet with a disinterested mediator, having knowledge of rail operations, prior to filing any legal action. In the event that the parties cannot agree on a mediator, such mediator shall be appointed, upon application of either party, by the Chief Judge of the United States District Court for the Eastern District of Missouri, or such Court's Alternative Dispute Resolution Office.

15. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior agreements, understandings, representations and statements, oral or written, are merged herein.

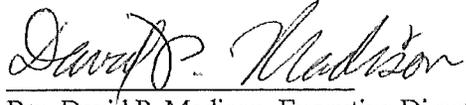
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by the duly authorized officers or officials; signature page follows:

RAILROAD SWITCHING SERVICES, INC.

A handwritten signature in cursive script, appearing to read "J. Michael Carr", written over a horizontal line.

By: J. Michael Carr, President

PEMISCOT COUNTY PORT AUTHORITY

A handwritten signature in cursive script, appearing to read "David P. Madison", written over a horizontal line.

By: David P. Madison, Executive Director