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THOMAS J. LITWILER
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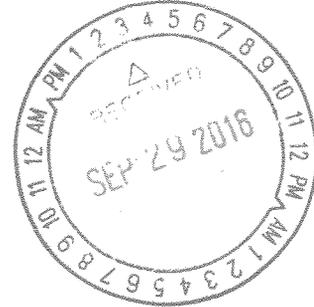
September 28, 2016

VIA FEDERAL EXPRESS

241629

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

ENTERED
Office of Proceedings
September 29, 2016
Part of
Public Record



Re: **Docket No. FD 36068**
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)(7)**, dated September 28, 2016. A check in the amount of \$1,200.00, 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,

A handwritten signature in black ink, appearing to be "TJL", written over a circular stamp.

Thomas J. Litwiler
Attorney for The Indiana Rail Road Company

TJL:tl

Enclosures

FEE RECEIVED
Septmber 29, 2016
SURFACE
TRANSPORTATION BOARD

FILED
September 29, 2016
SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD



36068
DOCKET NO. FD ~~36038~~

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)(7)**

Janet H. Gilbert
Thomas J. Litwiler
Fletcher & Sippel LLC
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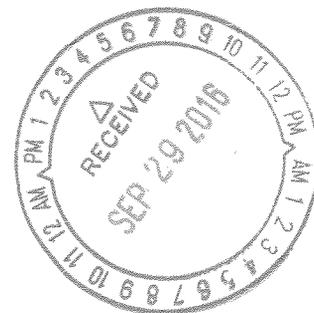
**ATTORNEYS FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: September 28, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36068

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



**VERIFIED NOTICE OF EXEMPTION OF
CEDAR RIVER RAILROAD COMPANY
PURSUANT TO 49 C.F.R. § 1180.2(d)(7)**

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)(7) for its acquisition of limited, temporary local trackage rights over a line of railroad of CSX Transportation, Inc. ("CSXT") between Sullivan and Oaktown, Indiana, a distance of approximately 14.55 miles. INRD holds existing, Board-authorized trackage rights on the CSXT Sullivan-Oaktown line which INRD can utilize in conjunction with service to specified off-line destinations. The proposed transaction will allow, for a limited time, INRD to utilize the existing rights to provide service to an additional off-line destination.

INRD is filing concurrently herewith, in Docket No. FD 36068 (Sub-No. 1), a petition to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the proposed expanded trackage rights to expire 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). CSXT has now agreed to temporarily expand the existing trackage rights to allow INRD to handle 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.

Thus, pursuant to a written Supplemental Agreement No. 6 dated as of September 1, 2016 between INRD and CSXT, INRD proposes to acquire additional limited, temporary local 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.

Supplemental Agreement No. 6 provides that the expanded component of INRD's trackage rights on the Sullivan-Oaktown line will expire on December 31, 2017. Because the duration of INRD's expanded trackage rights is greater than one year, and because those rights permit local service to the mine at Oaktown, the proposed transaction does not qualify under the

class exemption for temporary trackage rights provided in 49 C.F.R. § 1180.2(d)(8). See Railroad Consolidation Procedures, 6 S.T.B. 910, 914-915 (2003). Accordingly, INRD is concurrently filing in Docket No. FD 36068 (Sub-No. 1) a petition to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the proposed expanded trackage rights to expire on December 31, 2017. This is consistent with the Board's handling of prior similar circumstances. E.g., Indiana Southern Railroad, LLC -- Temporary Trackage Rights Exemption -- Norfolk Southern Railway Company, Docket No. FD 35965 (Sub-No. 1) (STB served November 25, 2015). 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 October 29, 2016.

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

The proposed temporary trackage rights permit INRD 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 copy of Supplemental Agreement No. 6 dated as of September 1, 2016 between CSXT and INRD is attached hereto as Exhibit 2. 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 and November 20, 2009 were previously submitted to the Board in Docket Nos. FD 35137, 35287 and 35328, 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, 2017 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).

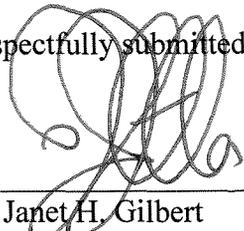
Caption Summary: 49 C.F.R. § 1180.4(g)(2)(i)

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: _____

Janet H. Gilbert

Thomas J. Litwiler

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 920

Chicago, Illinois 60606-2832

(312) 252-1500

**ATTORNEYS FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: September 28, 2016

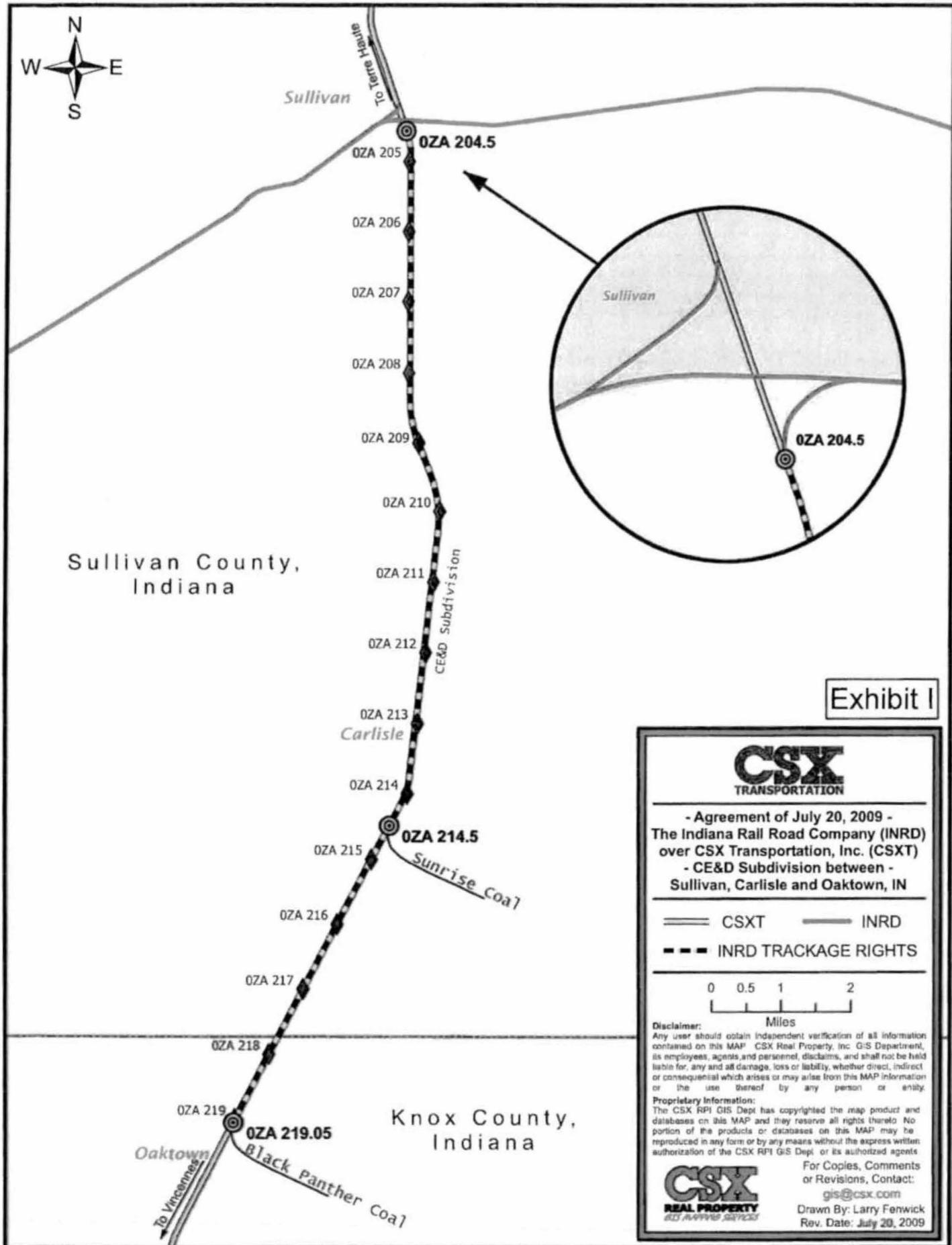


Exhibit I

SUPPLEMENTAL AGREEMENT No. 6

THIS SUPPLEMENTAL AGREEMENT No. 6, entered into as of this 1st day of September, 2016 between CSX TRANSPORTATION, INC., hereinafter referred to as "CSXT" or "Owner", and The INDIANA RAIL ROAD COMPANY, hereinafter referred to as "INRD" or "User."

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 trackage serving the Oaktown Mine at Oaktown, IN at approximate CSXT milepost OZA 219.05, and the connection of CSXT with INRD at approximate CSXT milepost OZA 204.5 at Sullivan, IN, a distance of approximately 14.5 miles, including the use of CSXT's connection with trackage serving the Sunrise Mine at approximate CSXT milepost OZA 214.5 at Carlisle, IN; and

WHEREAS, Sunrise Coal has acquired the Oaktown Mine and load-out and, as a result, plans to load primarily out of the Oaktown Mine location and load at the Carlisle location on an as-needed basis; and

WHEREAS, The INRD desires to obtain temporary trackage rights upon CSXT's railroad, for the sole purpose of handling unit coal trains ("Equipment") to serve the Kentucky Utilities Generating Station ("Customer") in Harrodsburg, KY from the Oaktown Loadout Facility; and

WHEREAS, CSXT's Coal Development Group and Coal Marketing officers have consented to allow INRD to serve the new Customer.

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

Section 1. TRackage SUBJECT TO AGREEMENT

Attached hereto, marked "Exhibit I" and by this reference incorporated herein, is a print, which depicts the portion of the CSXT railroad over which INRD will be granted temporary trackage rights hereinafter referred to as the "Subject Trackage" (as further defined in Article 1 of the 2008 Agreement).

Section 2. GRANT OF TEMPORARY TRackage RIGHTS

The terms and conditions covering the grant of temporary trackage rights are set forth in the 2008 Agreement. If any conflict between the 2008 Agreement and this Agreement shall arise, the provisions of this Agreement shall prevail. Subject to the terms and conditions of the 2008 Agreement, CSXT grants to INRD the temporary, nonexclusive right to use the Subject Trackage for Equipment that is in its account while moving over the Subject Trackage in common with CSXT and such other railroad company or companies as CSXT has heretofore admitted or may hereafter at any time admit to the joint use of any and all of the Subject Trackage, such other railroad

company or companies to hereinafter be considered CSXT for the purpose of this Agreement. Except as expressly provided otherwise herein, said grant of rights shall be solely for up to one (1) INRD unit coal train per week between Oaktown Mine (CSXT's CE&D Subdivision Mile Post OZA 219.05) and Sullivan, IN (CSXT's CE&D Subdivision Mile Post OZA 204.5) a distance of 14.55 miles for the period of September 1 2016 through December 31, 2017.

It is understood and agreed that:

- (a) INRD shall not have the right to:
 - (1) set out, pickup or store cars, or switch upon the Subject Trackage, or any part thereof, except as necessary for handling Equipment that is bad ordered en route; or
 - (2) to serve any industry, team or house track now existing or constructed in the future along the Subject Trackage which heretofore has not been served by INRD, except INRD may load unit coal trains at the Oaktown and/or Carlisle loadouts located at Oaktown, IN and Carlisle, IN, respectively; or
 - (3) permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own Equipment of any third party which in the normal course of business would not be considered the Equipment of INRD; provided, however, that the foregoing shall not prevent INRD, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.
- (b) INRD's temporary trackage rights are for the sole purpose of moving loaded and empty unit coal trains to serve the Customer.
- (c) INRD shall provide qualified INRD train crews per Article 11C. of the 2008 Agreement.
- (d) INRD locomotives shall have sufficient fuel for the entire movement of CSXT and INRD will be responsible for the 1,000 or 1,500 mile inspection of their trains.
- (e) INRD shall notify the appropriate CSXT Chief Dispatcher of the request to operate temporary trackage trains under this Agreement. All INRD train movements will be coordinated with the appropriate CSXT Dispatcher.

Section 3. TERM AND TERMINATION

Subject to the provisions of Article 17 of the 2008 Agreement, this Agreement shall become effective upon the date INRD first commences operations of the Subject Trackage pursuant to this Agreement, subsequent to having secured all necessary consent, approval or authority from appropriate governmental agencies upon

terms and conditions satisfactory to INRD, and shall remain in effect for the period of time specified in Section 2 hereof.

Section 4. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

Section 5. NON-WAIVER OF RIGHTS AND OBLIGATIONS

The failure of either party to this Agreement, in any one or more than one instance, to insist upon the performance of any of the terms of conditions of this Agreement, or to exercise any rights or privileges under this Agreement, or the waiver by either party to this Agreement of any breach of the terms or conditions of this Agreement, shall not be construed thereafter as waiving any such terms, covenants, rights, privileges or obligations, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

Section 6. REGULATORY APPROVAL

- (a) INRD at its own cost and expense shall initiate and thereafter diligently pursue an appropriate notice of exception to secure the prior approval of the Surface Transportation Board ("STB") for this Agreement (the "Trackage Rights Filing"). CSXT shall assist and support efforts of INRD to secure any necessary STB approval or exemption of this Agreement.
- (b) Concurrent with the Trackage Rights Filing, INRD shall file a petition to partially revoke exemption with the STB to permit the trackage rights over the Subject Trackage that are the subject of this Supplemental Agreement No. 6 to expire as of December 31, 2017 (the "Discontinuance"). In the event INRD fails to file the Discontinuance concurrently with the Trackage Rights Filing, INRD grants CSXT the power of attorney to file the Discontinuance on INRD's behalf and at INRD's expense. INRD shall consummate the discontinuance of the trackage rights by 11:59 pm on December 31, 2017. In the event INRD fails to consummate the discontinuance of the trackage rights by 11:59 pm on December 31, 2017, INRD grants CSXT the power of attorney to file the consummation notice on INRD's behalf and at INRD's expense.
- (c) Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

Section 7. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding of the parties with respect to the temporary trackage rights granted herein. No amendment, change or modification of this Agreement shall be valid unless in writing and signed by the parties hereto.

Section 8. PRIOR AGREEMENTS

The 2008 Agreement, as supplemented, shall remain unchanged and in full force and effect.

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

WITNESS

CSX TRANSPORTATION, INC.



Name: Elizabeth Brubeck
Title: Director Joint Facilities

By: 

Name: James Allan
Title: Director Joint Facilities & Agreements

WITNESS

THE INDIANA RAIL ROAD COMPANY



Name: Lisa Ann Ebert
Title: Director of Human Resources

By: 

Name: MICHAEL ENGEL
Title: SVP & CFO

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36068

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

Pursuant to a written agreement dated as of September 1, 2016, CSX Transportation, Inc. ("CSXT") has agreed to grant limited, temporary local 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 October 29, 2016, and will expire by agreement of the parties on December 31, 2017. INRD has concurrently filed a petition in Docket No. FD 36068 (Sub-No. 1) to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) to allow the proposed trackage rights to expire on December 31, 2017. The Board will address INRD's petition in a separate decision.

As a condition to this exemption, any employee affected by the 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)(7).¹ 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 October 21, 2016 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36068, 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: October __, 2016

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

¹ INRD states that its verified notice of exemption was not filed under the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8) because the proposed trackage rights are local rather than overhead and are longer than one year in duration. See Railroad Consolidation Procedures, 6 S.T.B. 910 (2003).

VERIFICATION

State of Indiana)
) SS:
County of Marion)

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 27 day
of September, 2016.



Notary Public

My Commission expires: Feb 24, 2022

