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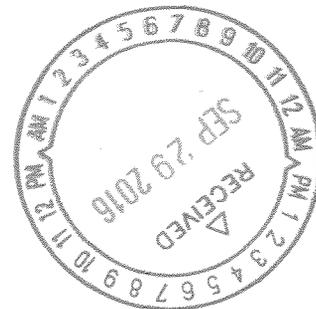
September 28, 2016

VIA FEDERAL EXPRESS

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

241630

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



Re: **Docket No. FD 36068 (Sub-No. 1)**
The Indiana Rail Road Company -- Temporary
Trackage Rights Exemption -- CSX Transportation, Inc.

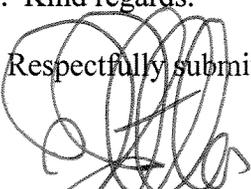
Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition to Partially Revoke Class Exemption and Allow Expiration of Trackage Rights** of The Indiana Rail Road Company, dated September 28, 2016. A check in the amount of \$300.00, representing the appropriate fee for this filing, is attached.

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

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,


Thomas J. Litwiler
Attorney for The Indiana Rail Road Company

TJL:tl

Enclosures

FEE RECEIVED
September 29, 2016
SURFACE
TRANSPORTATION BOARD

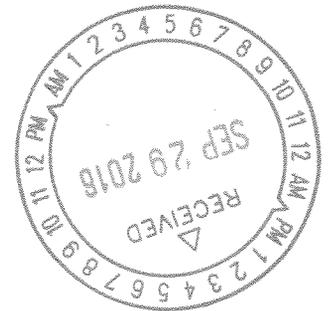
FILED
September 29, 2016
SURFACE
TRANSPORTATION BOARD

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

36068
DOCKET NO. FD ~~36038~~ (SUB-NO. 1)

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



**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION
AND ALLOW EXPIRATION OF TRACKAGE RIGHTS**

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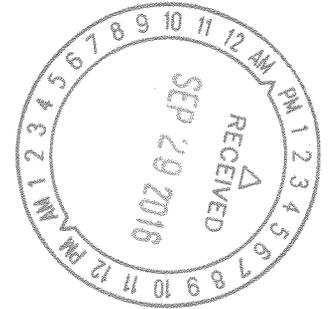
**ATTORNEYS FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: September 28, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36068 (SUB-NO. 1)

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



**PETITION TO PARTIALLY REVOKE CLASS EXEMPTION
AND ALLOW EXPIRATION OF TRackage RIGHTS**

The Indiana Rail Road Company ("INRD") hereby petitions the Board pursuant to 49 U.S.C. § 10502(d) to partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the temporary trackage rights proposed by concurrently-filed notice of exemption in Docket No. FD 36068 to expire by their own terms on December 31, 2017. The proposed action is consistent with the provisions of the Rail Transportation Policy, 49 U.S.C. § 10101, and with the Board's prior treatment of similar transactions.

As is explained in the notice of exemption in Docket No. FD 36068, INRD holds existing limited local trackage rights over a line of railroad of CSX Transportation, Inc. ("CSXT") between Sullivan and Oaktown, Indiana, for the purpose of handling unit coal trains from mines at Oaktown and Carlisle, Indiana to specified destinations on INRD or other railroads with which INRD interchanges.¹ CSXT has now agreed to temporarily expand the existing trackage rights to allow INRD to handle loaded and empty unit coal trains between the

¹ 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).

Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Kentucky in interline service with other rail carriers. The temporary trackage rights agreement between CSXT and INRD, entitled Supplemental Agreement No. 6 and dated as of September 1, 2016, specifically provides that the expanded trackage rights will expire on December 31, 2017.

While CSXT and INRD have expressly agreed on the duration of the proposed expanded rights, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. In appropriate circumstances, however, the Board will grant trackage rights exemptions for a limited time period rather than in perpetuity. See, e.g., BNSF Railway Company -- Temporary Trackage Rights -- Union Pacific Railroad Company, Docket No. FD 35963 (Sub-No. 1) (STB served December 17, 2015) ("BNSF/UP"); Indiana Southern Railroad, LLC -- Temporary Trackage Rights Exemption -- Norfolk Southern Railway Company, Docket No. FD 35965 (Sub-No. 1) (STB served November 25, 2015) ("ISR/NS"). Indeed, the Board has an existing class exemption for temporary trackage rights that involve overhead operations and will have a duration of one year or less. 49 C.F.R. § 1180.2(d)(8); Railroad Consolidation Procedures, 6 S.T.B. 910 (2003).²

Approval of temporary trackage rights through a notice of exemption under 49 C.F.R. § 1180.2(d)(7) and a petition to partially revoke the class exemption is well-established. Railroad Consolidation Procedures, 6 S.T.B. at 911 n. 5 (explaining process used prior to adoption of the 49 C.F.R. § 1180.2(d)(8) class exemption); BNSF/UP; ISR/NS. The Board will partially revoke the class exemption and allow the exempted trackage rights to expire on a certain date pursuant to 49 U.S.C. § 10502 when it finds that: (1) continued regulation is not

² That class exemption is not available in this case given the local nature and 14-month duration of INRD's proposed temporary trackage rights.

necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

Here, INRD's temporary trackage rights will already be authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). Granting the relief sought in this petition will eliminate the need for a second pleading seeking discontinuance authority or exemption when the agreement expires, thereby promoting the Rail Transportation Policy goals at 49 U.S.C. §§ 10101(2), (4), (5), (7) and (15). See Railroad Consolidation Procedures, 6 S.T.B. at 913 n.8; ISR/NS at 2. Detailed scrutiny of a subsequent discontinuance application or petition is not required to carry out any other element of the Rail Transportation Policy.

Limiting the term of the proposed trackage rights is consistent with the limited scope of the class exemption under 49 C.F.R. § 1180.2(d)(7) and the exempted transaction itself, which simply involves allowing unit coal trains to an additional destination to be handled over an existing trackage rights route. Because the expanded trackage rights would not have been granted by CSXT in the absence of a temporary duration, expiration of the trackage rights will not adversely affect the current competitive situation of any shipper and further regulation is not needed to protect against an abuse of market power.

Upon a granting of this petition, INRD will not require separate discontinuance authority from the Board to end service under the expanded trackage rights when Supplemental Agreement No. 6 expires on December 31, 2017. The expiration of the expanded trackage rights will, however, be subject to the employee protection conditions set forth in Oregon Short Line R. Co. -- Abandonment -- Goshen, 360 I.C.C. 91 (1979). See Railroad Consolidation Procedures, 7 S.T.B. 587 (2004).

WHEREFORE, INRD respectfully requests that the Board partially revoke the class exemption at 49 C.F.R. § 1180.2(d)(7) as necessary to allow the expanded trackage rights proposed in Docket No. FD 36068 to expire on December 31, 2017.

Respectfully submitted,

By: _____

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**ATTORNEYS FOR THE INDIANA
RAIL ROAD COMPANY**

Dated: September 28, 2016