

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

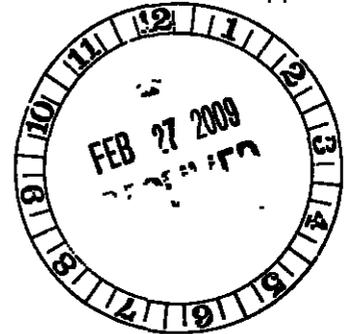
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February 26, 2009



VIA FEDERAL EXPRESS

Ms Anne K Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

Re **Finance Docket No. 35224**
Elgin, Joliet & Eastern Railway Company – Intra-Corporate Family
Lease Exemption – Line of Illinois Central Railroad Company

Dear Secretary Quinlan

Enclosed for filing in the above-captioned proceeding are an original and ten copies of a **Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3)**, dated February 26, 2009. A check in the amount of \$1,400, 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,


Michael J. Barron, Jr.
Attorney for Elgin, Joliet & Eastern
Railway Company

FEE RECEIVED

FEB 27 2009

**SURFACE
TRANSPORTATION BOARD**

MJB p
Enclosures **FILED**

FEB 27 2009

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

FEB 27 2009

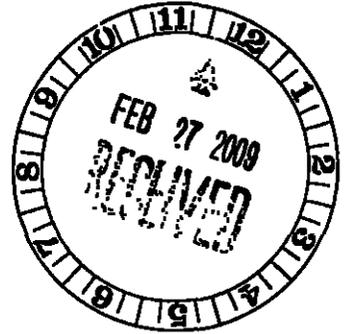
**Part of
Public Record**

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO

35224

ELGIN, JOLIET & EASTERN RAILWAY COMPANY
-- INTRA-CORPORATE FAMILY LEASE EXEMPTION --
LINE OF ILLINOIS CENTRAL RAILROAD COMPANY



VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)

Orig

Thomas J. Healey
Counsel - Regulatory
CN
17641 South Ashland Avenue
Homewood, Illinois 60430
(708) 332-4381

Michael J Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ELGIN, JOLIET &
EASTERN RAILWAY COMPANY**

Dated: February 26, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. _____

ELGIN, JOLIET & EASTERN RAILWAY COMPANY
-- INTRA-CORPORATE FAMILY LEASE EXEMPTION --
LINE OF ILLINOIS CENTRAL RAILROAD COMPANY

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(3)

Elgin, Joliet & Eastern Railway Company ("EJ&E"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) for the intra-corporate family lease of a line of railroad of Illinois Central Railroad Company ("IC") near Plainfield (outside of Joliet) in Will County, Illinois. EJ&E and IC are wholly-owned indirect subsidiaries of Canadian National Railway Company ("CN"). IC will retain the right to use the Subject Line to serve any future industries on the line and to access IC's other rail operations in the Joliet area.

The proposed transaction within a corporate family will not adversely affect the level of any existing rail service and will not result in significant operational changes or any change in the competitive balance with carriers outside of the CN corporate family.

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

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

EJ&E is a Class II common carrier by rail which operates in northeastern Illinois and northwestern Indiana over 190 track miles consisting primarily of an arc around Chicago

extending from Waukegan, Illinois southward to Joliet, Illinois, then in an easterly direction to Gary, Indiana, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to numerous customers, including steel mills, coal utilities, plastics and chemical producers, steel processors, distribution centers and scrap processors.

IC is a Class I common carrier by rail which owns and operates approximately 2,500 miles of rail line in Illinois, Kentucky, Tennessee, Alabama, Mississippi and Louisiana. IC and EJ&E are wholly-owned indirect subsidiaries of CN, which operates an approximately 20,250-mile rail system in sixteen U.S. states and eight provinces in the Dominion of Canada. CN's U.S. railroad subsidiaries report to the Board on a consolidated basis under the name Grand Trunk Corporation.

Pursuant to a lease agreement entered into by EJ&E and IC, EJ&E will lease from IC the Subject Line extending from Milepost 41.0 to Milepost 39.43 near Plaines (outside of Joliet), Illinois, a distance of approximately 1.57 miles. IC will retain the right to use the Subject Line, and no changes in present rail service and operations will occur. IC will provide service to any future industries that may locate on the Subject Line, and will continue to use the Subject Line to access IC's operations in the Joliet area and heading north toward Chicago.

The proposed transaction will result simply in the lease of a short rail line from one CN-controlled subsidiary to another. The lease of the Subject Line by IC to EJ&E is a transaction within a corporate family that will not result in adverse changes in service levels, significant operational changes or any change in the competitive balance between IC/EJ&E and carriers outside of their corporate family.

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

Elgin, Joliet & Eastern Railway Company
17641 South Ashland Avenue

Homewood, Illinois 60430
(708) 332-3500

Any questions concerning this Notice should be sent to EJ&E's representative at the following address

Michael J. Barron, Jr
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

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

EJ&E intends to consummate the proposed lease transaction on or shortly after March 29, 2009

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

The proposed lease will allow EJ&E to store and spot railroad cars delivered to a local power company and thereby increase operating efficiency

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

EJ&E owns railroad property in the states of Illinois and Indiana

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

A map of the Subject Line and other rail lines in the area is attached hereto as Exhibit 1.

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

A copy of the Lease Agreement executed by EJ&E and IC is attached hereto as Exhibit 2

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

As a condition to this exemption, EJ&E does not object to imposition of the employee protective conditions established in Mendocino Coast Ry., Inc. – Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980)

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

Under 49 C.F.R. § 1105.6(c)(2), EJ&E's proposed lease of the Subject Line is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), the proposed lease of the Subject Line by EJ&E also is exempt from historic preservation reporting requirements. EJ&E's lease of the Subject Line, and IC's retention of the right to use the line, is for the purpose of continued rail operations. Further Board approval would be required as a prerequisite to any abandonment or discontinuance of service, and there are no plans in connection with this transaction to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older

Respectfully submitted,

By: 

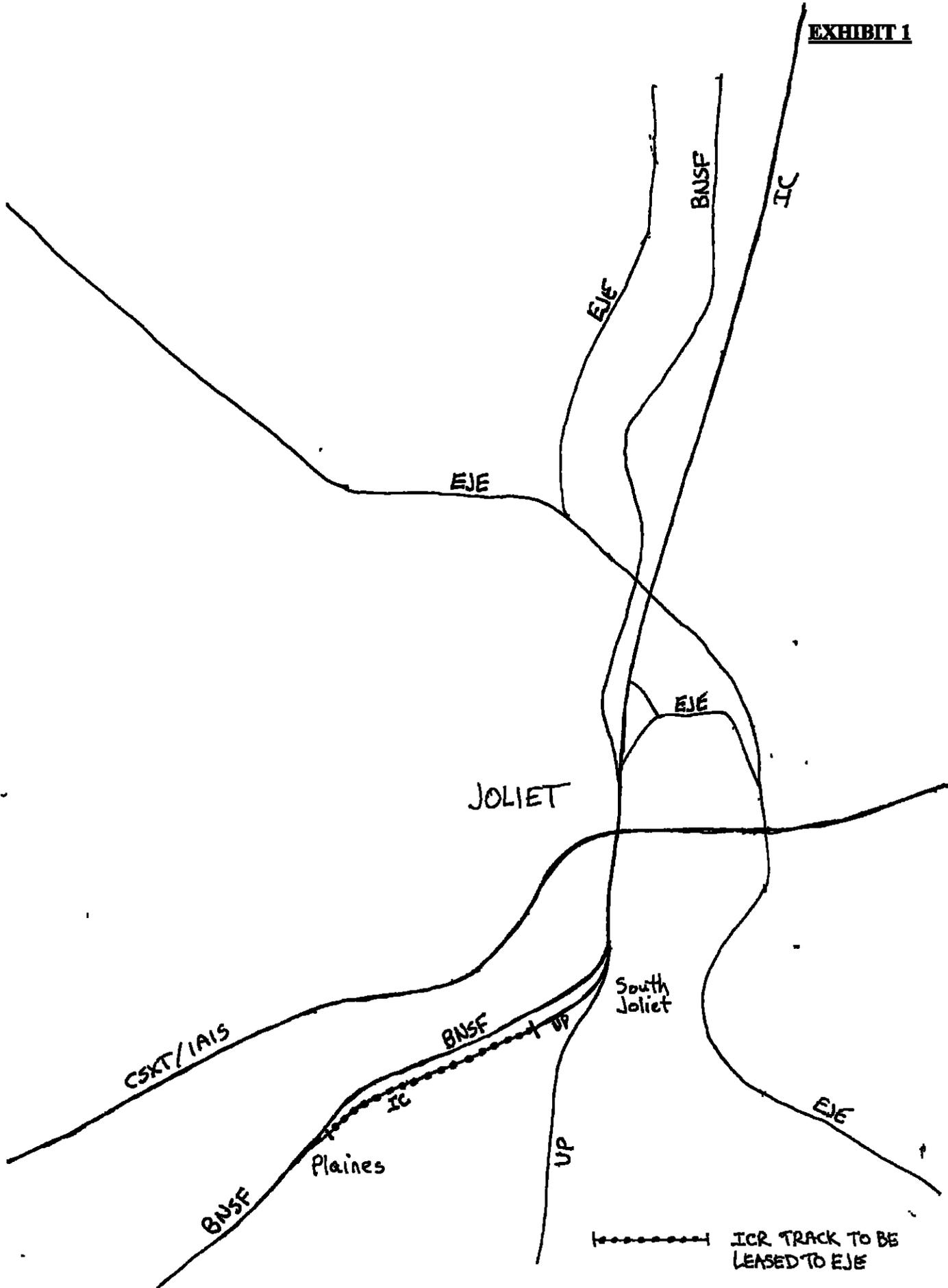
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29 North Wacker Drive
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Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR ELGIN, JOLIEY &
EASTERN RAILWAY COMPANY**

Dated: February 26, 2009

EXHIBIT 1



Lease No. _____

TRACK LEASE

This LEASE AGREEMENT ("Agreement") made and entered into this 25th day of February, 2009 by and between

**ILLINOIS CENTRAL
RAILROAD COMPANY
17641 South Ashland Avenue
Homewood, IL 60430**

**ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY
17641 South Ashland Avenue
Homewood, IL 60430**

("LESSOR")

("LESSEE");

In consideration of the covenants and conditions contained herein, the parties agree as follows:

1 Track and Demised Property. LESSOR hereby leases to LESSEE the nonexclusive right to use LESSOR's Plaines Industrial Lead Track from LESSOR's Milepost AH 39.43 (Start of LESSOR's ownership) to LESSOR's Milepost AH 41 (LESSOR's connection with BNSF Railway Company), approximately 1.57 miles, together with the land upon which said track is situated ("Track"), at Joliet on LESSOR's Joliet Subdivision in the State of Illinois; as shown on Exhibit A attached hereto and made a part hereof.

2. Use of Track. The nonexclusive right granted herein is for the use solely by LESSEE for the storing and spotting of railroad or privately owned or leased cars ("Cars"), which have been delivered to LESSEE for Midwest Generation, LLC and for no other purpose. The Cars that LESSEE may have on the Track shall not include cars containing hazardous materials. LESSEE shall not place any material, structure, equipment or other obstruction on the Track or permit any other person or firm to use the Track.

In the event that LESSEE uses motive power equipment to move Cars over the Track, in no case shall movement be permitted unless LESSEE's equipment is properly equipped with a standard railroad car coupling device, commonly referred to as a knuckle, and said device is securely fastened to LESSEE's equipment and properly in use. LESSEE's equipment shall be of

sufficient strength to be able to move and stop in a safe manner any cars, loaded or empty, coupled to the device for movement.

LESSEE agrees that no excavation, building structure, platforms, obstruction or Equipment of any kind shall be placed, erected or permitted nearer than 8.5 feet laterally of the center line, or within 23 feet vertically from the top of the rail of Track

LESSEE shall maintain Track free of debris and waste and free of any vegetation that may interfere with the safe use of Track, and in compliance with applicable laws, rules and regulations which may apply, including but not limited to Bureau of Explosives Circular No. 17, and shall dispose of said debris in accordance with applicable governmental rules, laws and regulations

3. Damage, Vandalism, Clean Up, etc. At all times when held upon the Track, LESSEE shall be solely responsible for any damage, vandalism, defacement, or destruction of the Cars. LESSEE shall be solely responsible for all clean up costs or other costs or damages related directly or indirectly to leakage, spill or other emission from, or fire caused by, the products contained in Cars stored on the Track.

4. Term. The term of this Agreement shall commence on the 25th day of February 2009 and shall be one year in duration This Agreement shall be automatically extended for additional terms of one year each unless terminated by either party as provided in Paragraph 13.

5 Rent For rental of Track, LESSEE shall pay as rent for the first Term the sum of one hundred fifty seven thousand five hundred ten dollars (\$157,510.00) ("Base Rent"). For subsequent Terms, LESSEE will be billed by LESSOR in advance of the anniversary date of this Agreement The sum shall be due and payable by LESSEE within thirty (30) days of receipt of such billing

6. Switching and Demurrage The use by the LESSEE of the Track for its own purposes shall in no way alter or affect rates, charges, or terms of any other transportation service. Charges for switching the Cars within the terminal area shall be assessed under the appropriate contract and/or published tariffs, and the private Cars shall be subject to the application of Demurrage Rules and Charges, except when held upon the Track. In the case of railroad-owned Cars, demurrage rules and charges will apply from the time that Cars are placed upon the Track.

7. Acceptance of Track by LESSEE; Cost of Repairs, Maintenance, etc. LESSOR makes no warranty or representation, either express or implied, as to the condition of Track and LESSEE accepts Track as is, it being agreed that all risks with respect to the use of Track are assumed by LESSEE. Any and all improvements, repairs and maintenance thereof necessary for LESSEE'S use

and operation thereof shall be performed by LESSOR at LESSOR's sole cost and expense.

It is understood and agreed that during the term of this Agreement, LESSOR may from time to time require the temporary use of Track for its purposes, provided that the temporary use of Track shall not unreasonably interfere with the rights of LESSEE hereunder. LESSOR may, in connection with such temporary use, transfer the Cars placed on Track for the account of LESSEE to another location and upon completion of its temporary use of the Track, LESSOR shall return LESSEE'S Cars thereto. During the period that the Cars of LESSEE are temporarily placed at another location, the terms of this Agreement shall continue to apply to any temporary track in the same manner as they apply to the Track.

In exercising its rights under this Agreement, LESSEE shall adopt and enforce suitable rules and regulations satisfactory to the LESSOR for the protection of LESSEE'S employees and others while in or on Cars, or on or near Track. LESSEE will require such employees and others to notify the employees of LESSOR, by proper signals or flags, that LESSEE'S employees are in or on cars, or on or near Track.

8. Compliance with Laws. LESSEE shall strictly comply with: (1) all Federal, State and Municipal laws, ordinances, circulars, rules or regulations now in effect, or which may from time to time be enacted or prescribed, and all amendments or changes thereto, including all applicable environmental laws, ordinances, rules and regulations and (2) all rules, standards or specifications which may from time to time be published by LESSOR, relating to the type of cars being stored by LESSEE hereunder, the contents thereof or safety devices or other procedures applicable to the handling of or used in holding and spotting the Cars on the Track. The cost and expense of repairs required on any Car to correct the defect causing any leakage shall be assumed by LESSEE

9 No Bailment. LESSOR shall not be liable as a common carrier or bailee for any property or lading contained in or upon the Car or Cars on the Track, it being understood and agreed that the property or lading shall be deemed and held to be in the possession of LESSEE insofar as liability for the safety and care thereof is concerned, and it is further agreed that for all purposes during the period when the Cars are detached from the engine the relationship of the parties hereto shall be on an exclusive lessor-lessee basis.

10. Indemnity. LESSEE shall indemnify and hold LESSOR and its officers, employees and agents harmless from and against all liabilities, obligations, rights, causes of action, losses, claims, assessments, damages, expenses, fines, penalties and costs (including, but not limited to, costs of complying with judicial or administrative cleanup orders, costs of complying with directives of federal and state environmental agencies, liability for death or injury

to persons, including, without limitation, officers, employees, agents, representatives, contractors, subcontractors, licensees or invitees of the parties hereto, and loss or damage or injury to any property, including, without limitation, that belonging to the parties hereto, and attorney's fees) (hereinafter "Liabilities") of any kind, nature and description arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from (1) the presence of any Car shipped or consigned to LESSEE on or at the Track, (2) LESSEE's exercise of rights granted by this Agreement, (3) any fire, explosion or act of vandalism involving any Car while the Car is on or at the Track, (4) the switching, spotting or movement of any Car on the Track, (5) the presence of any officer, employee, agent, representative, agent, contractor, subcontractor, licensee or invitee of LESSEE on or at the Track or adjacent railroad property, or (6) LESSEE's breach of or noncompliance with any covenant, agreement, obligation or duty under this Agreement. Notwithstanding anything in this Paragraph to the contrary, LESSEE shall have no obligation to indemnify LESSOR for Liabilities caused entirely by the sole negligence or willful misconduct of LESSOR.

11. Termination.

(a) **Mutual Right** Either party shall have the right to terminate this Track Lease by providing written notice of its intent to terminate to the other, given not less than thirty (30) days prior to the date of termination, provided, however, that such termination shall not affect the rights and obligations accruing to either party under the terms and conditions of this Agreement prior to the date of termination

12 Invalidity of Any Provision. In the event any provision, or part thereof, shall be held invalid or unenforceable, it shall not affect the validity or enforceability of any other provisions, or part thereof, of this Agreement.

13. Waivers by LESSOR A waiver or failure to exercise any right or option by LESSOR hereunder shall not affect LESSOR's right to enforce or exercise any future right or option of LESSOR hereunder. Notice to or knowledge by the LESSOR of any act or omission by LESSEE which is or might be a breach by LESSEE of any of the terms or conditions of this Agreement to be performed by LESSEE, and the acquiescence by LESSOR in or to such act or omission, shall neither be considered to relieve LESSEE of any obligation assumed by it under this Agreement nor be considered to be a waiver or release by LESSOR of any rights granted to it under this Agreement

14 LESSOR shall not be obligated to operate on Track, or to place or deliver Cars thereon, or to remove same therefrom, if it shall be prevented or hindered from so doing by ACTS of GOD, public authority, strikes, riots, labor disputes, or any other cause beyond its control, and nothing herein shall affect or alter LESSOR'S obligations to LESSEE for switching applicable tariffs or

contracts. LESSOR makes no warranties or representations, express or implied, as to the continuance of rail service to Track.

15. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

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

ILLINOIS CENTRAL RAILROAD COMPANY

By *John E. Merrill*

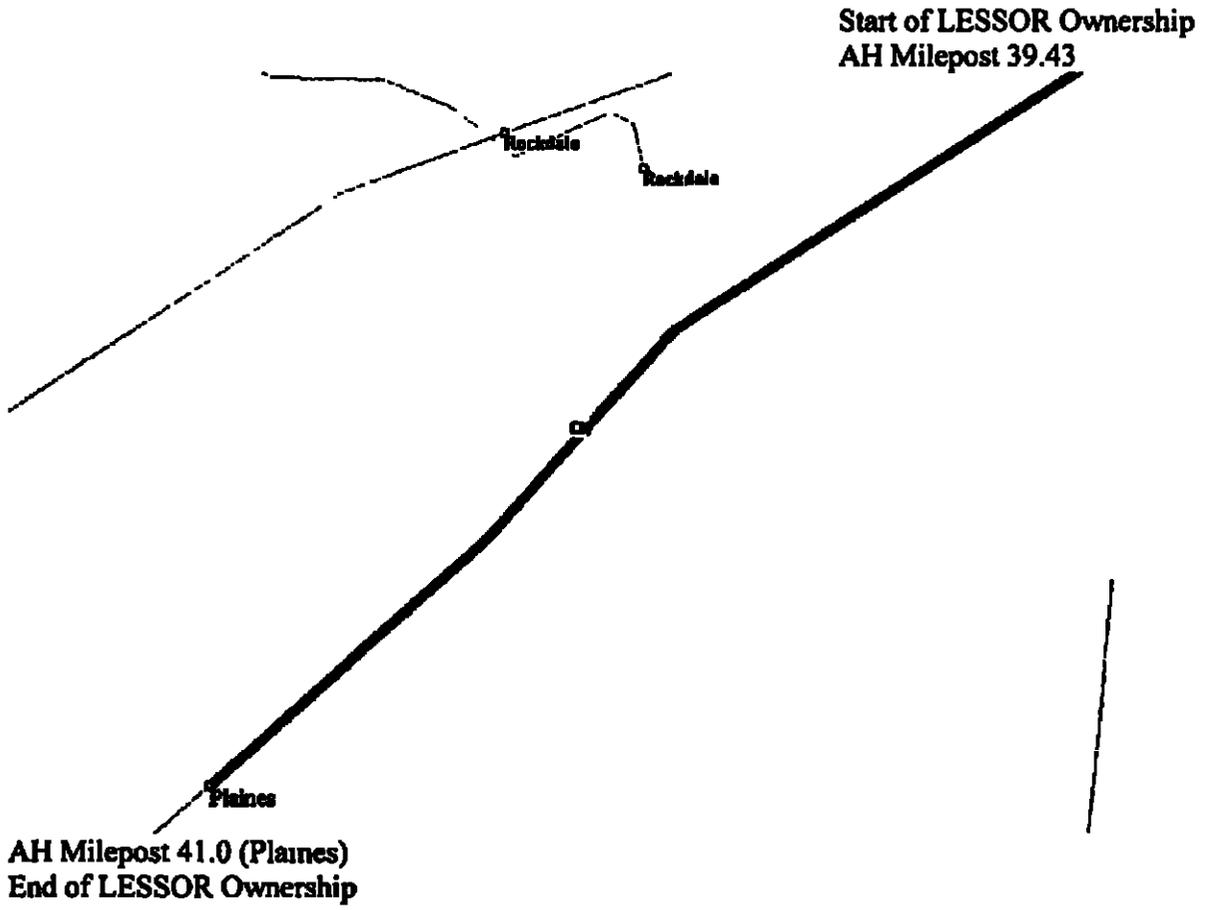
John E. Merrill
Manager Contracts

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By *Paul E. Ladue*

Paul E. Ladue
Region Director Contracts & Administration

PLAINES INDUSTRIAL LEAD



VERIFICATION

State of Illinois)
)
County of Cook) SS

Region Director of Contracts & Administration

Paul Ladue, being duly sworn, deposes and says that he is _____ of

Elgin, Joliet & Eastern Railway Company, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated

Paul Ladue

Paul Ladue

SUBSCRIBED AND SWORN TO
before me this 26 day
of February, 2009

Patricia A. Zieminski

Notary Public

My Commission expires

