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August 17, 2009

JOHN H. BROADLEY



Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423

Re: Finance Docket 35287, The Indiana Rail Road Company -- Trackage Rights Exemption -- CSX Transportation, Inc.

Dear Ms. Quinlan:

Enclosed for filing in the captioned matter are the following:

1. An original and ten copies of the Notice of Exemption in this proceeding,
2. Twenty extra copies of the map showing the location of the trackage rights,
3. A CD containing a copy of the Notice of Exemption in both Word and pdf format,
4. A check in the amount of \$1200.00 representing the filing fee, and
5. An extra copy of the Notice of Exemption which I ask you to date stamp and return with our messenger.

Should you have any questions concerning this matter, please do not hesitate to call me at the above number.

Yours very truly,

John Broadley

Enclosures

ENTERED
Office of Proceedings
AUG 17 2009
Part of
Public Record

225538

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

AUG 17 2009

Part of
Public Record

FINANCE DOCKET NO. 35287



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

FILED

AUG 17 2009

**SURFACE
TRANSPORTATION BOARD**

FEE RECEIVED

AUG 17 2009

**SURFACE
TRANSPORTATION BOARD**

VERIFIED NOTICE OF EXEMPTION

THE INDIANA RAIL ROAD COMPANY

ENTERED
Office of Proceedings

AUG 17 2009

Part of
Public Record

**John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
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E-mail jbroadley@alum.mit.edu**

Attorney for The Indiana Rail Road Company

Dated: August 17, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35287



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

VERIFIED NOTICE OF EXEMPTION

The Indiana Rail Road Company (“INRD”) submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of trackage rights over a line of railroad of CSX Transportation, Inc. (“CSXT”) between the connection of CSXT and INRD trackage at Sullivan, IN at approximate CSXT Milepost OZA 204.5 (“Sullivan”), and the connection between CSXT’s line and the tracks leading to a loading facility currently owned by Oaktown Fuels Mine No. 1 LLC at Oaktown, IN (the “Oaktown Mine”) at approximate CSXT Milepost OZA 219.05, a distance of approximately 14.5 miles (the “Line”). The trackage rights are necessary, for economy and efficiency of operation, to permit INRD crews to operate unit coal trains and unit empty hopper trains moving from and to the Oaktown Mine: (i) to an interchange with Indiana Southern Railroad Company (“ISRR”) at Beehunter, IN from which point the coal will move to a Vectren power plant at Culley, IN, and to an Indianapolis Power &

Light's ("IP&L") power plant at Petersburg, IN, and (ii) to IP&L's Harding Street power plant in Indianapolis, IN, located on INRD's line.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this notice (i) are covered by a written agreement, a copy of which is attached as Exhibit II,¹ and (ii) are not being filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

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

§ 1180.6(a)(1) Description of Proposed Transaction

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.

The transaction covered by this notice is the acquisition of limited non-exclusive trackage rights by INRD over CSXT's CE&D Subdivision, between the connection of CSXT and INRD trackage at Sullivan, IN at approximate CSXT Milepost OZA 204.5, and the connection of CSXT with tracks leading to the Oaktown Mine at Oaktown, IN at approximate CSXT Milepost OZA 219.05, a distance of approximately 14.5 miles. The

¹ Because the Supplemental Agreement granting to INRD trackage rights to and from the Oaktown Mine at Oaktown, IN is a supplement to a May 15, 2008 trackage rights agreement ("May 15, 2008 Agreement") granting to INRD trackage rights to and from the Sunrise mine at Carlisle, IN, for the convenience of the Board we have attached a copy of the May 15, 2008 Agreement as part of Exhibit II. The May 15, 2008 Agreement was implemented pursuant to a notice of exemption in Finance Docket No. 35137.

trackage rights will be used to permit INRD to move loaded coal trains and empty hopper trains between the Oaktown Mine and (i) INRD's interchange with ISRR at Beehunter, IN for onward movement to power plants at Culley and Petersburg, IN, and (ii) IP&L's Harding Street power plant in Indianapolis, IN located on INRD's line. The new trackage rights are set forth as a Supplemental Agreement to the May 15, 2008 Agreement between INRD and CSXT. The only other service INRD will provide over the Line will be movements of loaded coal trains and empty hopper trains between the Sunrise Mining Company loadout at Carlisle, IN and Indianapolis Power & Light's (IP&L") Harding Street electric generating station in Indianapolis and Hoosier Energy's Merom electric generating station, as permitted by the May 15, 2008 Agreement.

The name and business address of the applicant is:

The Indiana Rail Road Company²
101 West Ohio Street, Suite 1600
Indianapolis, IN 46204
Tel. 317-262-5140

Questions regarding this transaction are to be addressed to counsel named below:

John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 301-942-0676
E-mail jbroadley@alum.mit.edu

² INRD is wholly owned by Midland United Corporation which in turn is 85% owned by CSX Transportation, Inc. and 15% by Thomas G. Hoback, president of INRD and of Midland United Corporation. CSXT's acquisition of control of INRD was approved by the Board in *CSX Corporation et al. -- Control -- The Indiana Rail Road Company*, STB Finance Docket No. 32892, Nov. 7, 1996.

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

The Supplemental Agreement will be consummated on the later of September 17, 2009 or the date that is 30 days from the date the Board receives this filing.

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.

INRD will be able to move coal in single line service between the Oaktown Mine at Oaktown, IN and its interchange with ISRR at Beehunter, IN for onward movement to the Vectren power plant at Culley, IN and to the IP&L power plant at Petersburg, IN. INRD will also be able to move coal in single line service between the Oaktown Mine at Oaktown, IN and IP&L's Harding Street generating facility in Indianapolis which is located on INRD's line. Single line service between Oaktown and the interchange at Beehunter and between Oaktown and Indianapolis will facilitate the economical movement of the traffic. Absent the trackage rights, CSXT would have to take the traffic from Oaktown to Sullivan, IN, a distance of 14.5 miles, interchange it with INRD at Sullivan, and INRD take it to interchange with ISRR at Beehunter or to IP&L at Indianapolis. The 14.5 mile move over CSXT would not be economical considering that the closest CSXT crew base is at Evansville, IN, approximately 65 miles away. CSXT is not interested in participating in a routing for this traffic through Sullivan, IN.

§ 1180.6(a)(5) States in which the Applicant Has Property

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

INRD has property in the states of Illinois, Indiana and Kentucky. The involved trackage rights are located in the state of Indiana.

§ 1180.6(a)(6) Map (Exhibit 1)

1180.6(s)(6) Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of the 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.

A map is provided as Exhibit 1. Twenty unbound copies of the map accompany this filing to the Board.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

1180.6(a)(7)(ii) Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at § 1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

A copy of the draft Supplemental Agreement granting the trackage rights agreement is attached as Exhibit 2. Because the new trackage rights are granted as a supplement to the existing May 15, 2008 Agreement exempted in Finance Docket 35137, a copy of the May 15, 2008 Agreement is also attached.

§ 1180.4(g)(1)(i) Labor Protection

1180.4(g)(1)(i) The notice shall contain the information required in . . . and indicate the level of labor protection to be imposed.

INRD is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in Norfolk and Western Ry. Co. - Trackage Rights - BN, 354 I.C.C. 605 (1978), as modified by Mendocino Coast R. Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

1180.4(g)(2)(i) To qualify for an exemption under § 1180.2(d)(7) (acquisition or renewal of trackage rights agreements), in addition to the notice, the railroad must file a caption summary suitable for publication in the Federal Register. The caption summary must be in the following form:

A caption summary of this transaction suitable for publication in the *Federal Register* is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights).

Respectfully submitted,

THE INDIANA RAIL ROAD COMPANY

By: John Broadley
One of its attorneys

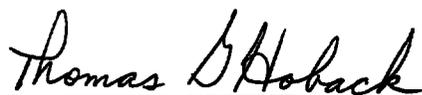
John Broadley
John H. Broadley & Associates, P.C.
1054 31st Street NW, Suite 200
Washington, D.C. 20007
Tel. 202-333-6025
Fax 301-942-0676
E-mail jbroadley@alum.mit.edu

Dated: August 17, 2009

VERIFICATION
(28 U.S.C. 1746)
(49 CFR 1104.5)

I, Thomas G. Hoback, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Notice of Exemption.

Executed on August 11, 2009



Thomas G. Hoback
Thomas G. Hoback
President and Chief Executive Officer
The Indiana Rail Road Company

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2009 I served a copy of the foregoing Verified Notice of Exemption by causing copies thereof to be deposited in the United States mail, postage prepaid, addressed to the following:

Steven C. Armbrust, Esq.
Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Indiana Department of Transportation
Rail Section
100 North Senate Avenue
Room N955
Indianapolis, IN 46204
Attention: Michael Riley, Railroad Section Manager

Secretary of Transportation
Office of Chief Counsel
Federal Railroad Administration
Docket Clerk
1200 New Jersey Avenue, SE
Washington, D.C. 20005

U.S. Department of Justice
Attorney General
Room B-103
950 Pennsylvania Avenue NW
Washington D.C. 20530-0001

Federal Trade Commission
Premerger Notification Office
600 Pennsylvania Avenue NW
Room 303
Washington, D.C. 20580

Governor Mitch Daniels
Office of the Governor
200 West Washington Street
Room 206
Indianapolis, IN 46204

John Bradley

Dated: August 17, 2009

EXHIBIT 1

MAP



Sullivan

To Terre Haute

OZA 204.5

OZA 205

OZA 206

OZA 207

OZA 208

OZA 209

OZA 210

OZA 211

OZA 212

OZA 213

Carlisle

OZA 214

OZA 214.5

OZA 215

Sunrise Coal

OZA 216

OZA 217

OZA 218

OZA 219

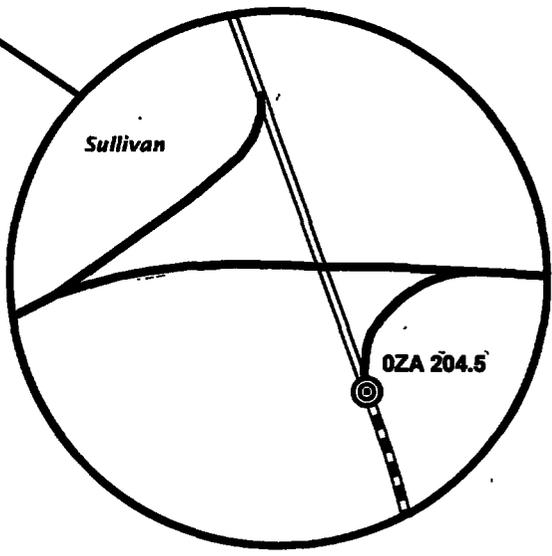
OZA 219.05

Knox County, Indiana

Oaktown

To Vincennes

Black Panther Coal



Sullivan County, Indiana

Exhibit I



- Agreement of July 20, 2009 -
The Indiana Rail Road Company (INRD)
over CSX Transportation, Inc. (CSXT)
- CE&D Subdivision between -
Sullivan, Carlisle and Oaktown, IN

==== CSXT ——— INRD
- - - - INRD TRACKAGE RIGHTS



Disclaimer:
Any user should obtain independent verification of all information contained on this MAP. CSX Real Property, Inc. GIS Department, its employees, agents and personnel, disclaims, and shall not be held liable for, any and all damage, loss or liability, whether direct, indirect or consequential which arises or may arise from this MAP information or the use thereof by any person or entity.

Proprietary Information:
The CSX RPI GIS Dept has copyrighted the map product and databases on this MAP and they reserve all rights thereto. No portion of the products or databases on this MAP may be reproduced in any form or by any means without the express written authorization of the CSX RPI GIS Dept or its authorized agents.



For Copies, Comments or Revisions, Contact:
gis@csx.com
Drawn By: Larry Fenwick
Rev. Date: July 20, 2009

EXHIBIT 2

TRACKAGE RIGHTS AGREEMENT

(Supplemental Agreement)

(May 15, 2008 Agreement)

SUPPLEMENTAL AGREEMENT

THIS SUPPLEMENTAL AGREEMENT, entered into as of this 1st day of August, 2009 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, INRD enjoys trackage rights over lines of CSXT between Sullivan and Carlisle, IN for purposes of handling coal from the Sunrise Mine at Carlisle, IN to Indianapolis Power & Light's ("IP&L") Harding Street electric generating station at Indianapolis, IN and Hoosier Energy's Merom electric generating station ("Agreement"); and

WHEREAS, INRD has an opportunity to handle additional coal from a mine at Oaktown, IN currently owned by Oaktown Fuels Mine No. 1, LLC (henceforth, the "Oaktown Mine") to power generation facilities of Vectren at Culley, IN and IP&L at Harding Street (Indianapolis) and Petersburg, IN; and

WHEREAS, INRD's handling of the aforesaid additional coal will require expansion of the Agreement's grant of trackage rights to cover INRD's movements over lines of CSXT between Carlisle and Oaktown, IN; and

WHEREAS, The Parties are agreeable to the aforesaid additional handling of coal by INRD, and desire to cover same by Supplement to the Agreement.

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

1. **ARTICLE 1. GRANT OF TRACKAGE RIGHTS** is re-written in its entirety such that the "Subject Trackage" is as follows:

CSXT's CE&D Subdivision, between the connection of CSXT with trackage serving the Oaktown Mine being constructed at approximate Milepost (MP) 0ZA 219.05 approximately at Oaktown, IN, and the connection of CSXT with INRD at MP 0ZA 204.5 approximately at Sullivan, IN, a distance of 14.5 miles approximately.

This grant shall include the right of INRD to enter and exit the subject trackage at the facilities of Sunrise Coal Company at Carlisle, IN at MP 0ZA 214.5 approximately at Carlisle, IN, a distance of 10.0 miles approximately, from Sullivan.

2. **ARTICLE 2. USE OF SUBJECT TRACKAGE** , sub-article B is re-written in its entirety to read as follows:

B. Except as provided in Article 3A of this Agreement, User may use the Subject Trackage solely for the purposes of the overhead movements of loaded coal trains from the Oaktown Mine at Oaktown and the Sunrise Mine at Carlisle to Sullivan, IN and empty hopper trains from Sullivan to the aforesaid mines at Oaktown and Carlisle, IN.

3. **ARTICLE 3. RESTRICTION ON USE**, sub-articles A and B are re-written in their entireties as follows:

A. The Trackage Rights herein granted are granted for the sole purposes of INRD operating its loaded coal trains and empty hopper trains in overhead services between the loadout facilities at the Sunrise Mine and the Oaktown Mine or their successors or assigns, at Carlisle and Oaktown, IN respectively on the one hand, and INRD's line of railroad running east to west through Sullivan, IN on the other hand. As of the date of this Agreement, said coal and empty hopper trains operated by INRD shall be limited to those supporting Sunrise Coal Company's, or its successors' or assigns', contracts to provide coal to IPL's Harding Street electric generating station and Hoosier Energy's Merom generating station, and to Vectren Fuels, Inc's, or its successors' or assigns' and/or Lafayette Energy's contracts to provide coal to the Vectren generating station at Culley, IN and IPL's generating stations at Harding Street (Indianapolis) and Petersburg, IN.

B. Should INRD seek to serve other coal consumers from the Sunrise and or Oaktown Mine loadout facilities during the term of this Agreement, such additional services shall be subject to the prior consent of CSXT's Coal Development and Coal Marketing officers, and shall be acknowledged by written amendment to this Agreement.

4. **ARTICLE 5. COMPENSATION**, sub-articles A and D are re-written in their entireties as follows:

A. "INRD" for the use it makes of the Subject Trackage between Carlisle and Sullivan, shall pay to CSXT a minimum of ELEVEN-THOUSAND-DOLLARS (\$ 11,000) per month, and for the use it makes of the Subject Trackage between Oaktown and Sullivan, shall pay to CSXT a minimum of TWENTY-THOUSAND-DOLLARS (\$ 20,000) per month in calendar year 2010 and a minimum of TWENTY-EIGHT-THOUSAND-FIVE-HUNDRED-DOLLARS (\$ 28,500) per month in 2011 and each calendar year thereafter, said amounts hereinafter referred to as the Current Charge. The Current charge with respect to the Carlisle movements reflects a volume of approximately 3,133 cars, loaded and empty combined per

month, and each locomotive unit operated over the Subject Trackage a distance of 10.0 miles. The Current Charge with respect to the Oaktown movements reflects a monthly volume of approximately 2,333 cars, loaded and empty combined per month in calendar year 2010, and 3,333 cars, loaded and empty combined per month in calendar year 2011 and each calendar year thereafter, and each locomotive unit operated over the Subject Trackage a distance of 14.5 miles. These amounts further reflect a Per Car Mile Charge of THIRTY FIVE CENTS (\$.35) in the case of the Carlisle movements and SIXTY-ONE CENTS (\$.61) in the case of the Oaktown movements. The first payment of the Oaktown Current Charge shall be payable, prorated, for the balance of the first calendar month, on the effective date of this Supplemental Agreement. The Current Charge shall then be due in full in advance of the beginning of each subsequent month.”

- D. In no event, shall User pay to Owner less than THIRTY-ONE-THOUSAND-DOLLARS (\$ 31,000) in any whole calendar month during the year 2010, and THIRTY-NINE-THOUSAND-FIVE-HUNDRED-DOLLARS-SEVENTY-CENTS (\$ 39,500) in any whole calendar month in the year 2011 and thereafter during the term of this Agreement.
5. **ARTICLE 20. TERM**, sub-article A. is rewritten to read
- A. This Agreement shall be effective the day and year first above written and shall remain in effect concurrent with and terminate concurrent with INRD’s railroad transportation contracts with the Utilities (IP&L, Hoosier Energy and/or Vectren) to transport coal from the Oaktown Mine and the Sunrise Mine on the one hand to the permitted destination electric generating facilities on the other, and any extensions or renewals thereof with the Utilities, but in no event beyond May 14, 2028. In the event a railroad transportation contract covering either Sunrise Mine or Oaktown Mine movements, but not both, is terminated, this Agreement shall remain in force with respect to movements covered by the other railroad transportation contract.
6. **REGULATORY APPROVAL** Should this Supplemental 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, petition, or notice to secure such approval. Owner shall assist and support efforts of User to secure any necessary STB approval of this Supplemental Agreement.
7. In all other respects, the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto execute this Supplemental Agreement, in duplicate, as of the day and year first above written.

WITNESS

CSX TRANSPORTATION, INC.

D R A F T

By _____
Its _____

WITNESS

THE INDIANA RAIL ROAD COMPANY

D R A F T

By _____
Its _____

AGREEMENT
Between
CSX TRANSPORTATION, INC.
And
THE INDIANA RAIL ROAD COMPANY, INC.
In the Matter of
Trackage Rights Between Sullivan and Carlisle, IN

THIS AGREEMENT, made as of this 15th day of May, 2008, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose principal place of business is Jacksonville, Florida, hereinafter referred to as "CSXT" or "Owner", and THE INDIANA RAIL ROAD COMPANY, INC., an Indiana corporation, whose principal place of business is Indianapolis, IN, referred to as "INRD" or "User". CSXT and INRD are sometimes referred to individually as a "Party" and collectively as the "Parties".

WITNESSES THAT WHEREAS:

Sunrise Coal Company has recently opened a coal loadout facility at Carlisle, IN; and

Sunrise has entered into commercial contracts with Indianapolis Power & Light (IPL) and Hoosier Energy, hereinafter collectively referred to as "Utilities", for movement of coal by rail ; and

From the standpoint of economy and operating efficiency, it is in the best interest of the Parties that INRD handle the Utilities' coal in single-line service between the Sunrise mine at Carlisle on the one hand, and IPL's Harding Street electric generating facility in Indianapolis and Hoosier Energy's Merom electric generating station on the other; and

The immediately aforesaid INRD operations will require that Sunrise construct two (2) loop tracks at its Carlisle facility, that INRD construct a CTC island through Sullivan and or a siding east of Sullivan, both on its railroad, and that INRD's loaded and empty coal trains move in an expedited fashion through the connection track between the respective lines in the southeast quadrant of the CSXT-INRD crossing at Sullivan; and

It will be necessary that INRD operate with its own crews and equipment, over CSXT's CE&D Subdivision between the loadout facility at Carlisle and the new connection at Sullivan; and

The parties desire to enter into a formal agreement covering INRD's operation over CSXT between Carlisle and Sullivan.

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 or cars) 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 "I" (hereinafter referred to as the "Subject Trackage"):

CSXT's CE&D Subdivision, between the connection of CSXT with trackage of Sunrise Coal Company being constructed at approximate Milepost (MP) OZA 214.5 at Carlisle, IN, and the connection of CSXT with INRD being constructed at approximated MP OZA 204.5 at Sullivan, a distance of 10.0 miles approximately,

ARTICLE 2. 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 provided in Article 3A of this Agreement, User may use the Subject trackage solely for the purpose of the overhead movement of loaded coal trains from Carlisle Mine to Sullivan and empty hopper trains from Sullivan to Carlisle Mine.
- C. User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars 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 Subject Trackage as may be designated by Owner for such purposes..
- D. 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.

ARTICLE 3. RESTRICTION ON USE

- A. The Trackage Rights herein granted are granted for the sole purpose of INRD operating its loaded coal trains and empty hopper trains in overhead service between the loadout facility of Sunrise Coal Company or its successors or assigns at Carlisle, and INRD's line of railroad running east to west through Sullivan. As of the date of this Agreement, said coal and empty hopper trains operated by INRD shall be limited to those supporting Sunrise Coal Company's, or its successors or assigns, contracts to provide coal to IPL's Harding Street electric generating station and Hoosier Energy's Merom generating station.

- B. Should INRD seek to serve other coal consumers from the Sunrise loadout facility during the term of this Agreement, such additional service shall be subject to the prior consent of CSXT's Coal Development and Coal Marketing officers, and shall be acknowledged by written amendment to this Agreement.
- C. User shall not perform any other freight service whatsoever at any point located on the Subject Trackage.
- D. Shipments transported by User over the Subject Trackage are limited to shipments moving solely in the accounts of User. User shall not transport any other shipments over the Subject Trackage unless otherwise provided in a written amendment to this Agreement.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. 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.
- B. 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 5. COMPENSATION

- A. INRD, for the use it makes of the Subject Trackage, shall pay to CSXT a minimum of SEVEN-THOUSAND-FIVE-HUNDRED-DOLLARS (\$ 7,500.00) per month, hereinafter referred to as the Current Charge. Said Current Charge reflects the movement of approximately 2781 cars, loaded or empty, and each locomotive unit operated over the Subject Trackage a distance of 10.0 miles at a Per Car Mile Charge of THIRTY FIVE CENTS (\$.35). The first payment of the Current Charge shall be payable, prorated, for the balance of the first calendar month, on the effective date of this Agreement. The Current Charge shall then be due in full in advance of the beginning of each subsequent month.
- B. User shall furnish to Owner, in care of Director-Intercarrer Agreement Accounts, CSX Transportation, 500 Water Street, J801, Jacksonville, FL 32202, within thirty (30) days of the end of each month, a statement of the number of locomotive units and loaded and empty cars operated over the Subject Trackage during the month. Based on this statement, Owner shall once annually on the anniversary date of this Agreement, restate the Current Charge for the succeeding one year term, to reflect the average monthly number of carloads moved by User in the year immediately preceding.
- C. User shall furnish Owner information concerning 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.

- D. In no event, shall User pay to Owner less than SEVEN-THOUSAND-FIVE-HUNDRED DOLLARS (\$ 7,500.00) in any whole calendar month during the term of this Agreement.

ARTICLE 6. REVISION OF CURRENT CHARGE

- A. The Per Car Mile Charge shall be revised upward or downward each year to reflect any increases or decreases in labor, material and other costs, beginning with the bill rendered for calendar month July, 2009, 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 Per Car Mile Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2008 Index for the first annual adjustment) as related to the index for the previous calendar year (2007 Index for the first annual adjustment) and applying that percent to the Per Car Mile Charge.
- B. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2007; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2008; "C" to be the Per Car Mile Charge; and "D" to be the percent of increase or decrease; the revised Per Car Mile Charge stated herein would be revised by the following formula:

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

$$(2) (D \times C) + C = \text{revised Per Car Mile Charge rounded to the third decimal place, effective July 1 of the year being revised}$$

- C. 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 subsequent 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.
- D. 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 7. PAYMENT OF BILLS

All payments called for under this Agreement shall be made by User within sixty (60) 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 two (2) years from the date of billing.

- A. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, 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 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall use commercially reasonable efforts to keep and maintain the Subject Trackage (or any replacement of it) in condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage at any time during the term hereof 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 and shall use commercially reasonable efforts to avoid such interruptions. Furthermore, except as may be otherwise provided in Article 14, 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 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the Parties hereto 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 the agreements concerning such facilities or connections.

- B. 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 its 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 additional 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 the portion of such trackage and appurtenances as may be 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 10. 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 11. 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 and cars) 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 and cars,) 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 or cars 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 or cars 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 and cars over the Subject Trackage qualified for operation thereover. 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. 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 any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic over the Subject Trackage.
- I. 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.
- J. 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.
- K. 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 12. 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 it directly to the owner of such cars.

ARTICLE 13. 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 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are 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 14. 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, judgments, 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 on the Subject Trackage involving the trains, locomotives, engines and/or employees of only one of the Parties, then the involved Party should 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 Party shall be solely responsible for any Loss to its own employees, locomotives and equipment and those cars in its own revenue account (including lading), and (ii) the Parties shall be 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.
- C. For purposes of assigning responsibility for 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 (i) forever protect, 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 (including without limitation attorney's fees and expenses and court or regulatory expenses) assumed by that Party or apportioned to it, and (ii) shall defend at its cost such indemnified Party against any claims for such liabilities, loss and expenses with counsel selected by the indemnifying Party and reasonably acceptable to the indemnified Party, 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. Notwithstanding anything to the contrary in this Article 14, whenever Loss occurs with one or more trains being involved, and one or more of the involved trains is a User train, and such Loss is attributable solely to the gross negligence or willful or wanton misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss. The Parties agree that, for purposes of this Article 14, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."
- F. Notwithstanding any provision of this Article 14 to the contrary, each Party shall assume and bear all responsibility for any Loss caused by acts or omissions of any its employees while under the influence of drugs or alcohol.
- G. 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.
- H. 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.
- I. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B (ii), 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 except when such cost and expense of loss, damage,

destruction, injury or death is caused by the sole negligence of Owner. 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.

- J. 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.
- M. In the event of a Loss as set out herein, the Parties to this Agreement, unless otherwise agreed between them in writing, 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.
- N. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 15. 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 of a Loss as defined in Article 14, 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.
- D. 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.
- E. 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.

- F. 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).
- G. 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 pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this 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.
- H. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. 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 the Subject Trackage. CSXT 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 CSXT 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 CSXT 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 CSXT's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to CSXT.

ARTICLE 17. 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, subject to any regulatory approval or exemption that may be required under governing law. 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 18. 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, petition, or notice 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 exemption of this Agreement from regulation, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

- A. Notwithstanding the provisions of Article 20, 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 (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance 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 or portion thereof 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 or portion thereof and that it desires to discontinue its use thereof:
- (i). User fails to submit an offer of financial assistance to purchase the Subject Trackage or portion thereof within the time prescribed by statute and applicable regulations, or
 - (ii). User, having made an offer of financial assistance to purchase the Subject Trackage or portion thereof, 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 or portion thereof. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Subject Trackage or portion thereof, 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 or portion thereof 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 or portion thereof 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 Subsection C above.

- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the Parties under this Article 19 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 20. TERM

- A. This Agreement shall be effective the day and year first above written and shall remain in effect concurrent with and terminate concurrent with Sunrise Coal Company railroad transportation contracts and any extensions or renewals thereof with the Utilities, but in no event beyond May 14, 2028.
- 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 21. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are caused by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; FRA orders, or governmental laws, orders or regulations.

ARTICLE 22. ARBITRATION

Any 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

Neither Party hereto shall transfer or assign this Agreement, or any of its rights,

interests, or obligations hereunder, to any person, firm, partnership or corporation without obtaining the prior written consent of the other Party. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties.

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: Director Passenger & Joint Facility Agreements
 CSX Transportation, Inc.
 500 Water Street, J315
 Jacksonville, FL 32202

If to User: General Manager Transportation
 The Indiana Rail Road Company
 101 W. Ohio St., Ste. 1600
 Indianapolis, IN 46204

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

ARTICLE 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is 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 and lettering 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 whom 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. For clarity the Parties agree that either Party may make known the existence of this Agreement to third parties.

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

Witness for CSXT:

CSX TRANSPORTATION, INC.

By: _____

Name: _____

Title: _____

Witness for INRD :

THE INDIANA RAIL ROAD COMPANY

By: _____

Name: _____

Title: _____

EXHIBIT 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

Finance Docket No. 35287

The Indiana Rail Road Company--Trackage Rights Exemption--CSX Transportation, Inc.

CSX Transportation, Inc. has agreed to grant limited overhead trackage rights to The Indiana Rail Road Company between Sullivan, IN and Oaktown, IN. The trackage rights will be effective on September 17, 2009.

This notice is filed under 49 CFR 1180.2(d)(7). 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 stay the transaction.

Dated:

By the Board.

Anne K. Quinlan

Acting Secretary