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BEFORE THE
SURFACE TRANSPORTATION BOARD



Chicago Port Railroad Company)

)

Finance Docket Number: FD34808

FILED

DEC 16 2005

VERIFIED NOTICES OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

TRANSPORTATION BOARD

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 719
Chicago, Illinois 60602
(312) 782-9025

Chicago Port Railroad Company

*Attorney for Applicant
in Finance Docket No. FD34808*

Applicant in Finance Docket No. FD34808

DATE FILED: December 15, 2005

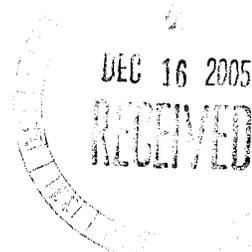
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Public Record

BEFORE THE
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Chicago Port Railroad Company

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Finance Docket Number: FD34808

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

Pursuant to 49 C.F.R. § 1150.31, *et. seq.* and 49 U.S.C. § 10502(a), Chicago Port Railroad Company (CPRR), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for CPRR's acquisition by operating agreement from Ozinga Transportation (OT), and operation pursuant to operating agreement with OT of approximately 1.3 miles of existing railroad right-of-way and trackage and transloading facilities owned by OT, in Chicago, Illinois ("Calumet River Yard and Transload Facility trackage"). The Calumet River Yard and Transload Facility trackage is more specifically described and depicted in Appendix 1-A (description) and Appendix 1-B (map) attached to this notice.

THE CHICAGO PORT RAILROAD COMPANY TRackage IS A LINE OF RAILROAD THAT QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901, RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION AND OPERATION AUTHORITY UNDER § 10906

Ozinga Transportation (OT) owns the Calumet River Yard and Transload Facility trackage. The trackage is used in conjunction with interchanging to and from Chicago RailLink Railroad, carloads of outbound cement and related aggregate products and related products after transloading, and inbound carloads for transloading through the loading and unloading of barges and ships in the

immediately adjacent Calumet River. This will be an entirely new bulk materials transload operation with on-site switching performed by locomotives and crews provided via Chicago Port Railroad Company.

There is currently 4,800 linear feet of track located on the Calumet River Yard and Transload Facility. There are plans to phase in additional track that Chicago Port Railroad Company will operate.

In those circumstances, the Calumet River Yard and Transload Facility trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transportation Board.*, 183 F.3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because Agracel

trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

...(I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party carrier rather than by the shipper-owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union vs. Surface Transportation Bd.*, *supra*. 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be CPRR's initial railroad acquisition, and the Calumet River Yard and Transload Facility trackage will constitute the entire line of railroad of

CPRR, it follows that the Calumet River Yard and Transload Facility trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) *The full name and address of the applicant;*

The full name and address of the applicant in Finance Docket Number FD34808 is Chicago Port Railroad Company, 15959 South 108th Avenue, Orland Park, Illinois, 60467.

(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence;*

CPRR representative is David C. Dillon, Dillon & Nash, Ltd., 111 West Washington Street, Suite 719, Chicago, Illinois, 60602, 312-782-9025.

(c) *A statement that an agreement has been reached or details when an agreement will be reached;*

An agreement between Ozinga Transportation and Chicago Port Railroad Company concerning the Calumet River Yard and Transload Facility trackage will be reached within thirty (30) days, and an agreement in principle has been reached. (A copy of a draft Operating Agreement (or Lease) is provided herewith.)

(d) *The operator of the property;*

CPRR will be the operator of the property.

(e) *A brief summary of the proposed transaction, including:*

(1) *The name and address of the railroad transferring the subject property,*

The above entity in Finance Docket Number fd34808 is Ozinga Transportation, a non-railroad corporation, 15959 South 108th Avenue, Orland Park, Illinois, 60467.

(2) *The proposed time schedule for consummation of the transaction,*

The operating agreement and operation are proposed to be consummated prior to

January 1, 2006, provided that this notice of exemption has been filed at least fifteen days prior to that date.

(3) *The mile-posts of the subject property, including any branch lines, and*

The Calumet River Yard and Transload Facility trackage is not described by milepost numbers. That trackage is described and depicted in Appendix 1-A and 1-B attached to this Notice.

(4) *The total route miles being acquired;*

A total of approximately 1.3 miles of trackage is to be operated under an operating agreement.

(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States:*

The required map is attached to this Notice as Appendix 1-B.

(g) *A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.*

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 for Finance Docket Number FD34808 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed acquisition and operation do not require environmental and historic reporting. See 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notices in the Federal Register of the filing of notices of exemption in Finance Docket No. FD34639. See 49 C.F.R. § 1150.32(b).

Respectfully submitted,


Chicago Port Railroad Company

By: David C. Dillon
Dillon & Nash, Ltd.
111 West Washington Street
Suite 719
Chicago, Illinois 60602
(312) 782-9025

*Attorney for Applicant
in Finance Docket No. FD34808*

Applicant in Finance Docket No. FD34808

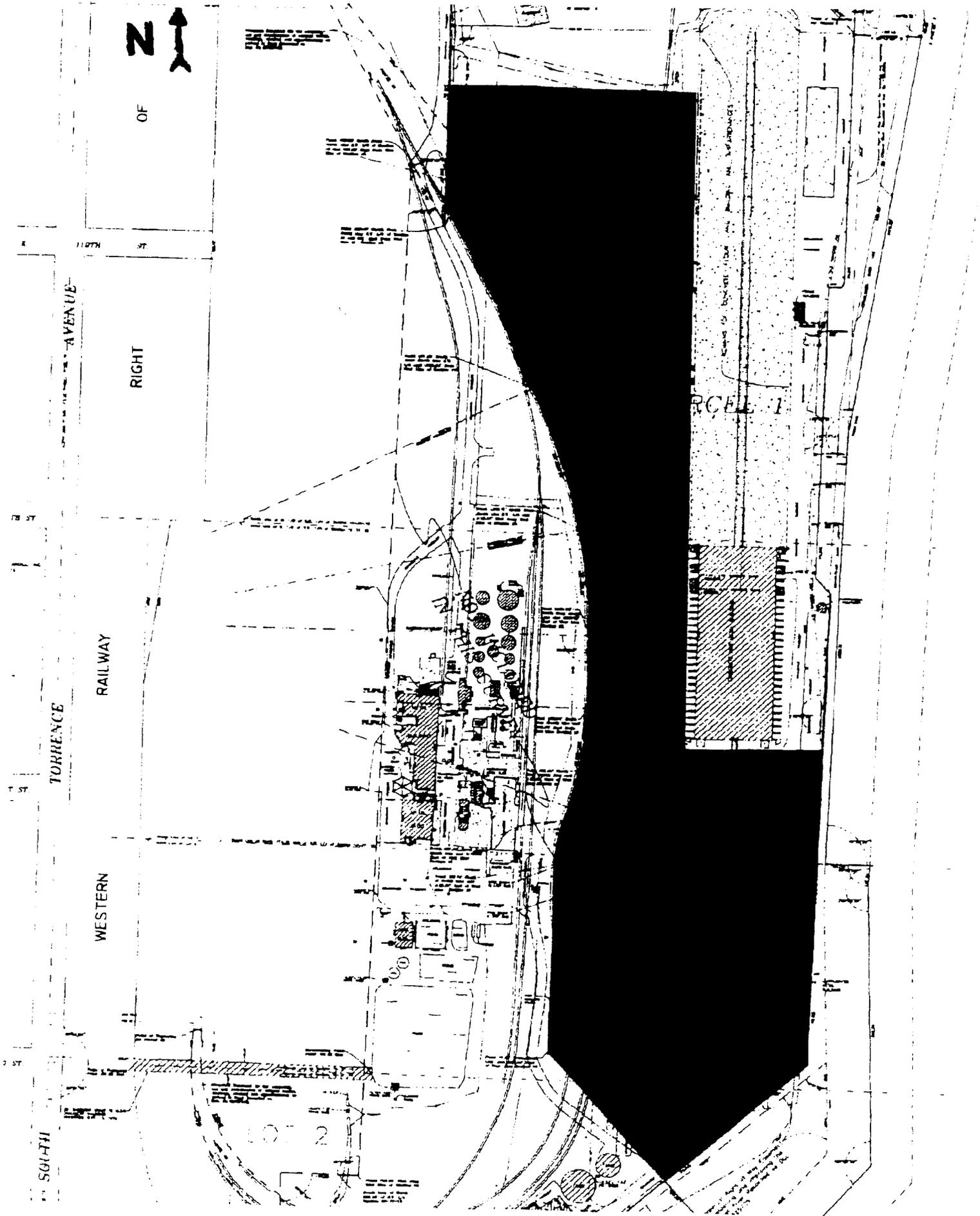
DATE FILED: December 15, 2005

Finance Docket Number: FD34808

Appendix 1-A

LENGTH OF CHICAGO PORT RAILROAD COMPANY
CALUMET RIVER YARD AND TRANSLOAD FACILITY

Total Track: 6,800 linear feet = 1.3 miles of track



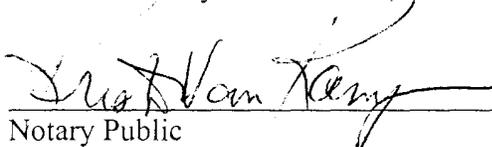
CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Chicago Port Railroad Company hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the acquisition and operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



David C. Dillon
*Authorized Representative of
Chicago Port Railroad Company*

SUBSCRIBED AND SWORN TO before
me this 15th day of December, 2005.


Notary Public

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. FD34808

CHICAGO PORT RAILROAD COMPANY
- ACQUISITION EXEMPTION -
RAIL LINE OF OZINGA TRANSPORTATION
AT CALUMET RIVER YARD AND TRANSLOAD FACILITY, CHICAGO, ILLINOIS

Chicago Port Railroad Company (CPRR), has filed a Notice of Exemption to acquire and operate from Ozinga Transportation, a non-carrier, approximately 1.3 miles of right-of-way and trackage at Ozinga Transportation's Calumet River Yard and Transload Facility in Chicago, Illinois. Comments must be filed with the Board and be served on CPRR's representative, David C. Dillon, Dillon & Nash, Ltd., 111 W. Washington Street, Suite 719, Chicago, IL, 60602, (312) 782-9025.

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

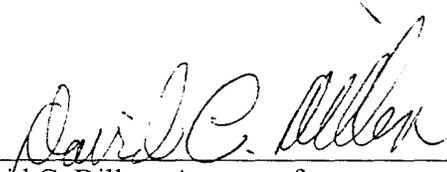
(Seal)

Vernon A. Williams, Secretary

VERIFICATION

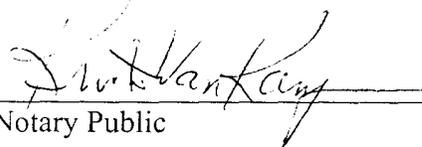
STATE OF ILLINOIS)
)
COUNTY OF COOK)

David C. Dillon, being duly sworn, states that he is an attorney for Chicago Port Railroad Company; that he is familiar with the factual allegations made in the foregoing Notice of Exemption on behalf of CPRR; and that such allegations are true as stated.



David C. Dillon, Attorney for
Chicago Port Railroad Company

SUBSCRIBED AND SWORN to before
me this 15th day of December, 2005.



Notary Public

DRAFT

THIS AGREEMENT CONTAINS AN AUTOMATIC RENEWAL PROVISION

OPERATING AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of January, 2006, between OZINGA TRANSPORTATION (OT); AND CHICAGO PORT RAILROAD COMPANY (CPRR).

WITNESSETH:

WHEREAS, OT has acquired by Access Agreement from OT approximately 1.3 miles of right-of-way and trackage located at OT's Calumet River Yard and Transload Facility, in Chicago, Illinois, more particularly described in Appendix 1-A and depicted on Appendix 1-B attached hereto ("the Calumet River Yard and Transload Facility trackage"); and

WHEREAS, CPRR desires to operate and maintain the Calumet River Yard and Transload Facility trackage for the provision of rail service in the name of, and in behalf of, OT; and

WHEREAS, OT is agreeable to such operation and maintenance upon the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein the parties hereto agree as follows:

ARTICLE ONE

**GRANT OF RIGHT TO OPERATE AND
MAINTAIN THE
CALUMET RIVER YEAR AND TRANSLOAD FACILITY TRACKAGE**

Subject to the terms and conditions provided in the Access Agreement between OT and CPRR, (i) OT hereby grants to CPRR the right to operate its trains, locomotives, cars, and equipment with its crews over the Calumet River Yard and Transload Facility trackage for the purpose of providing rail service to shippers and receivers located on such lines and to transport

shipments by rail over such lines, and to maintain the Calumet River Yard and Transload Facility trackage, and (ii) CPRR agrees to operate and maintain the Calumet River Yard and Transload Facility trackage. CPRR reserves the right to operate trains, locomotives, cars, and equipment on an as-needed basis, using a leased locomotive or a substitute, using its own personnel. CPRR will perform all necessary freight car switching at the Calumet River Yard and Transload Facility and will operate all freight car loading and unloading facilities.

ARTICLE TWO

TERM; TERMINATION

Section 2.01 Term. Subject to earlier termination as provided herein, the term of this Agreement shall be one year from the date of this Agreement shown above; provided, however, that this Agreement will be renewed automatically for additional one year periods unless, no later than 60 days before its expiration, either OT or CPRR provides written notice to the other party of its intent not to renew this agreement.

OT may terminate this Agreement upon ten (10) calendar days written notice if by any reason most of the circulating shares in CPRR with right to a vote are no longer property of OT, or its parent or affiliated companies, or if any shares in CPRR are owned, directly or indirectly, by a competitor of OT.

Section 2.02 Termination For Default. Either party may terminate this Agreement by written notice if the other party fails to perform any obligation required of it hereunder and fails to remedy such default within thirty (30) days after receipt of written notice of such default.

Section 2.03 Termination for Bankruptcy, Etc. Either party may immediately terminate this Agreement by written notice if the other party enters into or is placed in bankruptcy or receivership or is nationalized, become insolvent, or makes an assignment for the benefit of its creditors.

ARTICLE THREE

SCOPE OF OPERATIONS AND MAINTENANCE AND COMPENSATION THEREFORE

The scope of operations and maintenance and the agreed compensation therefore are contained in Appendix 2 attached hereto. The parties may amend Appendix 2 from time to time by executing an amended scope of operations and maintenance and compensation.

ARTICLE FOUR

GOVERNMENT APPROVAL, ETC.

CPRR at its own expense shall obtain any and all governmental approvals, authorizations, permits, licenses, and exemptions that may be required for its operation and maintenance of the Calumet River Yard and Transload Facility trackage.

ARTICLE FIVE

INSURANCE

CPRR shall be required to obtain and keep in force a commercial general liability insurance policy covering CPRR's operation and maintenance of the Calumet River Yard and Transload Facility trackage, including public liability, personal injury, property damage, and contractual liability with per occurrence and aggregate limits of not less than \$2 million. OT shall be named as an additional insured in such policy. Upon reasonable request, CPRR shall make such policy available for inspection and review by OT.

ARTICLE SIX

MANAGEMENT AND OPERATIONS

CPRR shall comply with the provisions of the Federal Safety Appliance Act, as amended, and all other federal, state, and local laws, regulations and rules respecting (i) the operations and maintenance of the Calumet River Yard and Transload Facility trackage, (ii) the operation,

condition, inspection and safety of CPRR's trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Calumet River Yard and Transload Facility trackage. CPRR shall indemnify, protect, defend, and save harmless OT and its officers, agents and employees from and against all fines, penalties and liabilities imposed upon CPRR or its officers, agents and employees under such laws, rules and regulations by any public authority or court having jurisdiction in the premises, when attributable in any manner to the failure of CPRR to comply with its obligations under this article.

ARTICLE SEVEN

LIABILITY AND INDEMNITY

Whenever any loss of, damage to, or destruction of any property whatsoever, or injury or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, or equipment of, or in the account of CPRR, CPRR shall assume all liability therefore, and shall forever protect, defend, indemnify and save harmless OT and its officers, agents and employees from and against any such liability, cost and expense, except if such loss, damage, injury or death was caused by OT.

ARTICLE EIGHT

ENVIRONMENTAL CONDITIONS

OT shall indemnify CPRR for any and all Losses resulting from environmental conditions existing on the Calumet River Yard and Transload Facility trackage as of the commencement of operations by CPRR. CPRR shall indemnify OT for any and all Losses resulting from environmental conditions occurring or arising on the Calumet River Yard and Transload Facility trackage during the term of this Agreement except to the extent caused by the act or omission of OT.

ARTICLE NINE

THIRD PARTY CLAIMS RELATING TO OWNERSHIP OPERATION

CPRR shall not cause any lien, claim, or encumbrance to be placed against the Calumet River Yard and Transload Facility trackage. If any such lien, claim or encumbrance shall be filed or placed against the Calumet River Yard and Transload Facility trackage or any part thereof, CPRR agrees to discharge the same within 30 days after CPRR has notice thereof. If CPRR fails to do so, OT shall have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amount so paid, including interest, fees, charges, and expenses, shall be paid by CPRR to OT, as applicable.

ARTICLE TEN

FINANCIAL STATEMENTS

If OT shall so request, CPRR shall be required on a quarterly basis to provide statements reflecting its financial condition, such as a balance sheet and profit-loss statement.

ARTICLE ELEVEN

CONFIDENTIALITY

CPRR will keep secret and confidential at all times and will not disclose, divulge, or communicate any confidential or proprietary information provided by OT hereunder, in any manner, directly or indirectly, to any third party, except as permitted by this Agreement, and except where that information:

- (a) is or later become publicly known under circumstances involving no breach of this Agreement by CPRR;

- (b) was already known to CPRR at the time it was received from OT, not under an obligation of confidentiality, as evidenced by written documents in the possession of CPRR; or
- (c) is made available to CPRR by a third party without secrecy obligations and without breach of an obligation to OT.

CPRR may disclose confidential information only to those of its directors, officers, and employees who legitimately require it for the purposes permitted by this Agreement, and will use its best efforts to prevent any unauthorized disclosure by them.

Notwithstanding the termination of this Agreement, the obligations of CPRR under this Section 11 shall continue in force for ten (10) years after termination.

ARTICLE TWELVE

REAL PROPERTY TAXATION

CPRR agrees to file Illinois Department of Revenue Railroad Property Tax Forms (including but not limited to PTAX 500 through 513 and 520A through 523, and 537), listing the Calumet River Yard and Transload Facility property as "railroad operating property" as defined in the applicable Illinois statutes. CPRR shall pay the resulting property taxes or immediately fully reimburse OT if OT pays such taxes.

ARTICLE THIRTEEN

AMENDMENTS

This Agreement represents the entire understanding between the parties and supersedes and replaces any and all prior agreements between the parties relating to the subject matter hereof. This Agreement may not be amended except by a written instrument signed on behalf of each party by its authorized representatives.

ARTICLE FOURTEEN

ASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other, except that OT may assign this Agreement to any entity which succeeds, by sale, merger, acquisition, transfer, or otherwise, to all or substantially all of its assets or business at its Calumet River Yard and Transload Facility.

ARTICLE FIFTEEN

MISCELLANEOUS

Section 15.01 Any notices, requests, or other communications hereunder shall be in writing and shall be deemed to have been duly given when made upon a party by personal service at any place where they may be found or by mailing such notices, requests, or communications by certified mail, postage prepaid and return receipt requested, or by nationally recognized courier, or by transmitting such notice by facsimile, in each case to the following addresses or facsimile numbers, as the case may be:

- (a) If to OT: Ozinga Transportation
15959 South 108th Avenue
Orland Park, IL 60467
Attention: President
- (b) If to CPRR: Barry N. Voorn, Attorney at Law
15959 South 108th Avenue
Oak Lawn, IL 60467

Either party may provide changes in the above addresses to the other party by a notice given to the other party in this Section 15.01.

Section 15.02 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

Section 15.03. Severability. If any provision in this Agreement shall for any reason be determined to be invalid or unenforceable, the balance of such provision and the remaining provisions of this Agreement shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable provision had not been a part hereof.

Section 15.4 Titles. The title of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

Ozinga Transportation

By: _____
Authorized Representative

Chicago Port Railroad Company

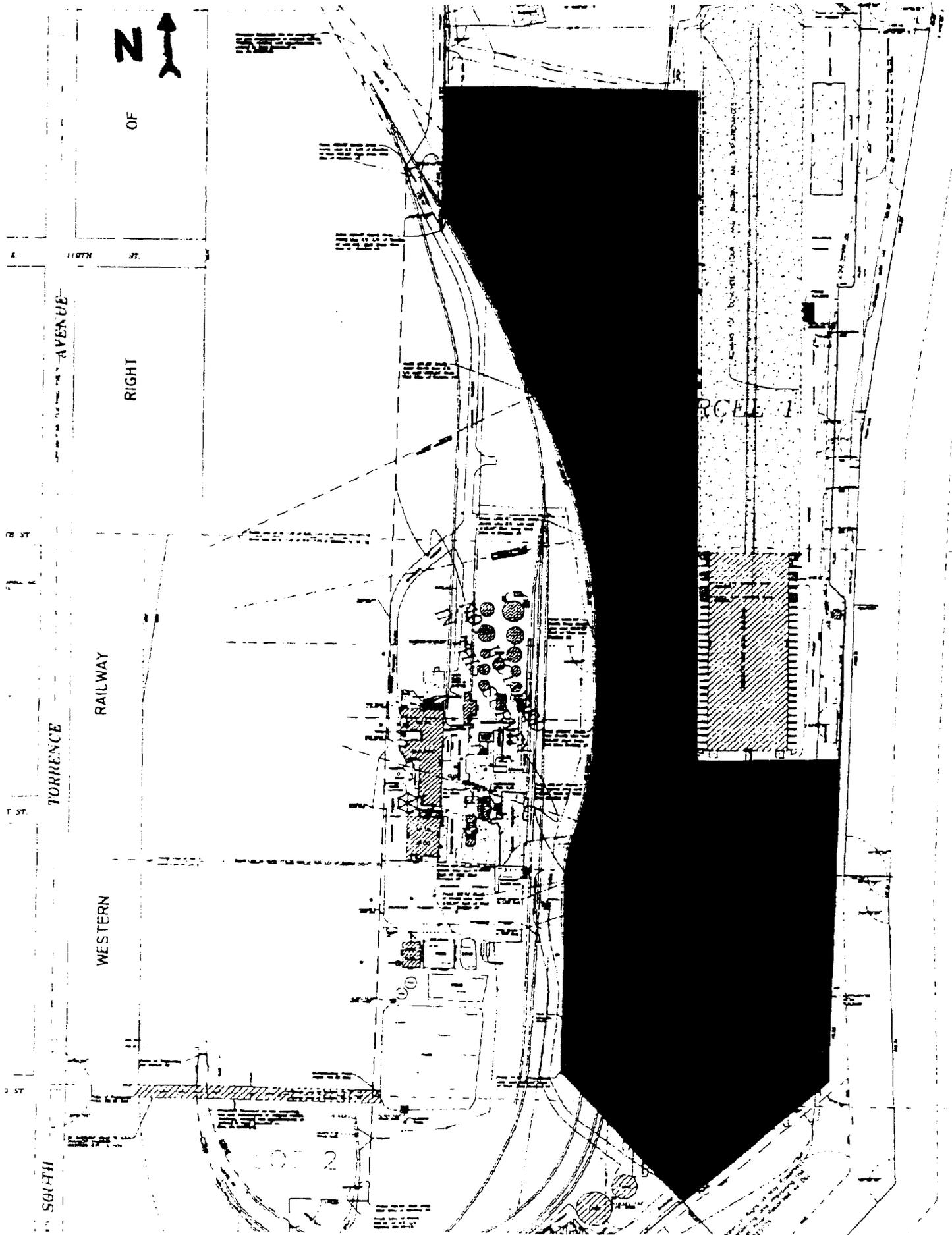
By: _____
Authorized Representative

Finance Docket Number: FD34808

Appendix 1-A

LENGTH OF CHICAGO PORT RAILROAD COMPANY
CALUMET RIVER YARD AND TRANSLOAD FACILITY

Total Track: 6,800 linear feet = 1.3 miles of track



APPENDIX 2

SCOPE OF WORK

OZINGA TRANSPORTATION (OT) and CHICAGO PORT RAILROAD COMPANY (CPRR) hereby agree to the following scope of work in accordance with Article Three of the Operating Agreement between them made and entered into as of January 1, 2006.

A. **Operation**

Chicago Port Railroad Company will furnish a properly trained and qualified locomotive engineer and railroad switchman (collectively, operating crew) to provide railroad switching service at the Chicago River Yard and Transloading Facility, Chicago, Illinois (work site). It is expected that the operating crew will work eight hours a day, Monday through Friday (full time) or as required. If such railroad switching service does not occupy that number of hours of operation on any day, the operating crew shall utilize the remaining hours of any such day doing one or more of the following activities: (1) hand check track gauge within all tracks and turnouts; (2) clean and lubricate moving parts of all switches; (3) hand check bolts within switch and track area; (4) perform other railroad-related projects as needed. At the reasonable request of OT from time to time, the operating crew will work a greater number of hours per day than the numbers identified above.

CPRR will furnish a locomotive capable of performing the railroad switching service identified above. CPRR will maintain that locomotive in such manner that it is in condition adequate to perform the rail switching service identified above. CPRR will provide for use by operating crew: (1) a contractor vehicle with small tools and a generator; and (2) a set of hand radios.

B. **Maintenance**

The operating crew will perform light track maintenance and daily inspection of the trackage at the work site. CPRR will provide sufficient properly trained and qualified maintenance personnel to perform other maintenance activity, as needed (collectively, maintenance crew). The number of persons in a maintenance crew will vary depending on the maintenance work to be done. However, in most cases, a maintenance crew will consist of four persons. CPRR will provide equipment and tools as required for maintenance activity.