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June 24, 2002

ORIGINAL



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

RE: Finance Docket No. 34224, *Indiana Southern Railroad, Inc.—Trackage Rights—
Norfolk Southern Railway Company*

Dear Secretary Williams:

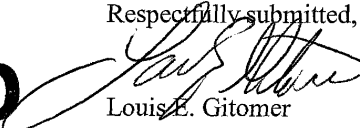
Enclosed for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(7), a check covering the \$900.00 filing fee, 20 additional maps, along with file Notice of Exemption.doc on three 3.5-inch IBM-compatible floppy diskettes.

Please time and date stamp the extra copy of this letter and the Notice of Exemption and return it with our messenger.

If you have any questions, please call or email me.

Respectfully submitted,

FILED


Louis E. Gitomer

Enclosures

JUN 24 2002

**SURFACE
TRANSPORTATION BOARD**

**ENTERED
Office of Proceedings**

JUN 24 2002

**Part of
Public Record**

FEE RECEIVED

JUN 24 2002

**SURFACE
TRANSPORTATION BOARD**

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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34224

INDIANA SOUTHERN RAILROAD, INC.
--TRACKAGE RIGHTS--
NORFOLK SOUTHERN RAILWAY COMPANY



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SURFACE
TRANSPORTATION BOARD

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard, N.W.
Second Floor
Boca Raton, FL 33487
(561) 994-6015

Louis E. Gitomer, Esq.
Of Counsel
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1455 F Street, N.W.
Suite 225
Washington, DC 20005
(202) 638-3307

Attorneys for:
INDIANA SOUTHERN RAILROAD, INC.

Dated: June 24, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34224

INDIANA SOUTHERN RAILROAD, INC
--TRACKAGE RIGHTS--
NORFOLK SOUTHERN RAILWAY COMPANY

NOTICE OF EXEMPTION

The Indiana Southern Railroad, Inc. ("ISRR") submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) for limited local trackage rights over certain rail lines owned by Norfolk Southern Railway Company ("NSR"). The parties have entered into a written agreement for the trackage rights (Exhibit B) which are not sought as a responsive application in a rail consolidation proceeding.

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), ISRR submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

ISRR is acquiring non-exclusive limited local trackage rights from NSR over that portion of NSR's track between a point near Newburgh, IN, milepost 0.0, and Lynnville Mine, IN, milepost 21.9, a total distance of approximately 21.9 miles.

Name and address of tenant railroad:

Indiana Southern Railroad, Inc.
497 Circle Freeway Drive, Suite 230
Cincinnati, OH 45246

Questions and correspondence concerning this notice may be addressed to:

Louis E. Gitomer
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, DC 20005
(202) 638-3307

(a)(1)(ii) Consummation Date

The transaction is scheduled to be consummated on or shortly after July 1, 2002.

(a)(1)(iii) Purpose Sought to be Accomplished

The involved trackage rights will enable ISRR to enhance service for certain shippers and provide more efficient and economical routings and service for this traffic.

(a)(5) List of States in which the Party's Property is Situated

ISRR operates in the State of Indiana. The involved trackage rights are located solely in

the State of Indiana.

(a)(6) Map

A map illustrating the involved trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A copy of the draft trackage rights agreement is attached as Exhibit B.

Labor Protection

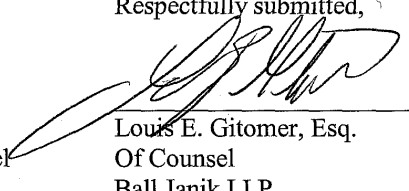
This trackage rights transaction involves one Class I railroad and one Class III railroad. Therefore, under 49 U.S.C. § 11326(a) the appropriate level of labor protection is *Norfolk and Western Ry. Co.—Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1978).

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Respectfully submitted,

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
RailAmerica, Inc.
5300 Broken Sound Boulevard, N.W.
Second Floor
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(561) 994-6015



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Attorneys for:
INDIANA SOUTHERN RAILROAD, INC

Dated: June 24, 2002

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34224

INDIANA SOUTHERN RAILROAD, INC
--TRACKAGE RIGHTS--
NORFOLK SOUTHERN RAILWAY COMPANY

Norfolk Southern Railway Company ("NSR") has agreed to grant limited local trackage rights to Indiana Southern Railroad, Inc. ("ISRR") over that portion of NSR's track between a point near Newburgh, IN, milepost 0.0, and Lynnville Mine, IN, milepost 21.9, a total distance of approximately 21.9 miles. The trackage rights will be effective on July 1, 2002.

This Notice is filed under § 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.

Vernon A. Williams
Secretary

EXHIBIT A-MAP

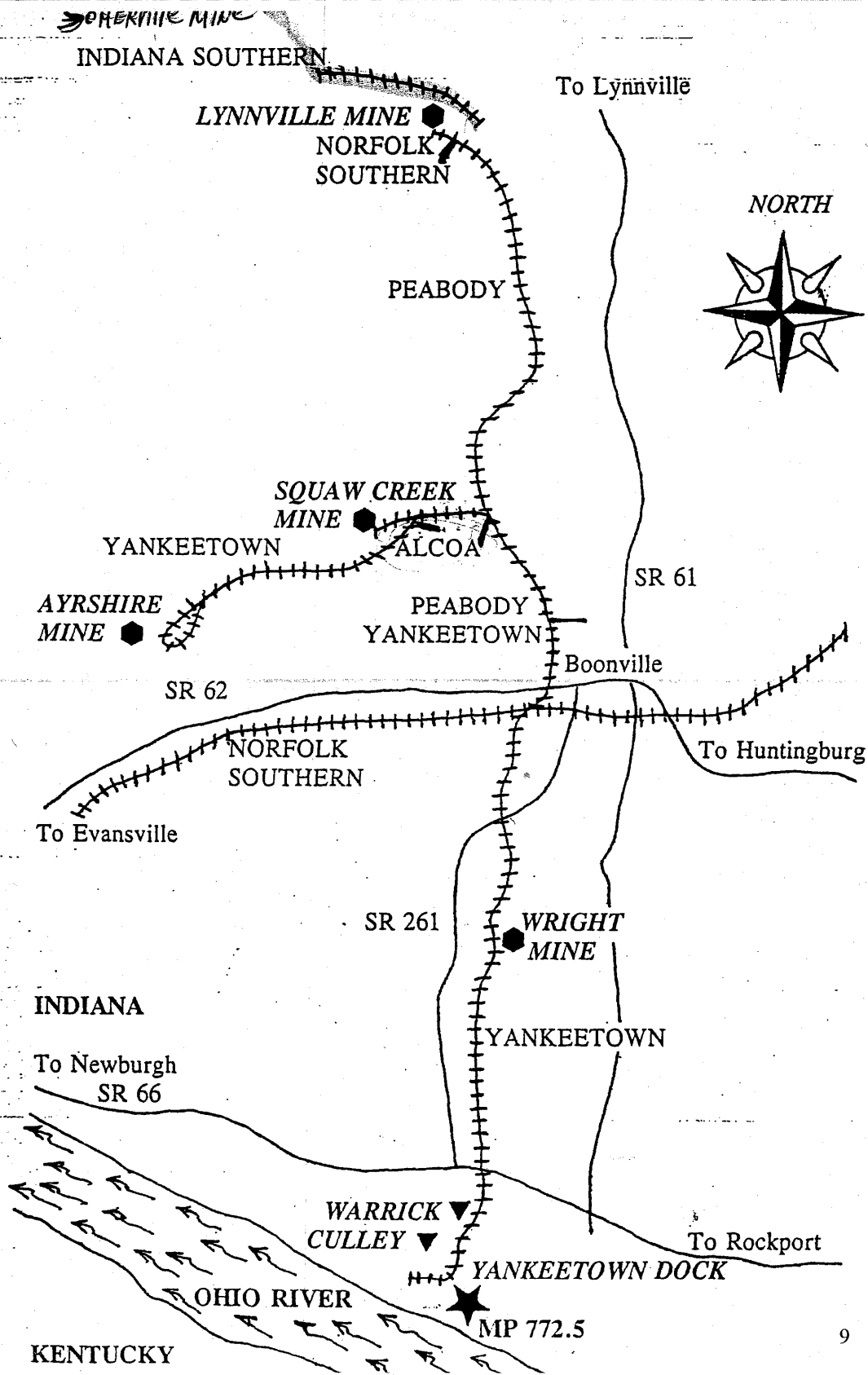


EXHIBIT B-AGREEMENT

June 6, 2002 Draft
TRACKAGE RIGHTS AGREEMENT

THIS TRACKAGE RIGHTS AGREEMENT made this ____ day of June, 2002 by and between **INDIANA SOUTHERN RAILROAD, INC. (hereinafter "ISRR" or "User")**, and **NORFOLK SOUTHERN RAILWAY COMPANY (hereinafter "NSR")**;

WITNESSETH:

WHEREAS, NSR intends to acquire two private spur tracks over which it already has authority to operate pursuant to ICC and U.S. District Court decisions, totaling 21.9 miles in length (hereinafter "Subject Trackage") in Warrick County, Indiana, and extending between Lynnville Mine, Indiana, and a point near Newburgh (Warrick), Indiana, pursuant to a June 2002 purchase and sale agreement ("Purchase Agreement"), from Peabody Coal Company (hereinafter "PCC") and Yankeetown Dock Corporation (hereinafter "YDC") at a Closing scheduled for June 25, 2002, and NSR plans to operate these tracks as an integral part of its common carrier rail system; and

WHEREAS, NSR is willing to grant ISRR for a limited duration why a limited duration? limited local trackage rights over the Subject Trackage for the sole purpose of enabling ISRR to transport coal mined and loaded at the Somerville Mine, (located on ISRR's line-of-railroad approximately nine miles north of the Subject Trackage) and destined to the Alcoa Generating, Inc., and to the Yankeetown Dock, both located in the vicinity of Newburgh (Warrick), Indiana; and

WHEREAS, NSR is willing to allow User the right to use the Subject Trackage on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties agree as follows:

Section 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions of this agreement (hereinafter "Agreement"), NSR hereby grants to User, for the sole purpose herein authorized, the non-exclusive right to operate its trains, locomotives, cars and equipment with its own crews, hereinafter referred to as "Trackage Rights" over the Subject Trackage from User's connection with NSR at Lynnville Mine, Indiana (approximately 12.1 miles north of the crossing of the Subject Trackage with NSR's main track between Evansville, Indiana, and Huntingburg, Indiana, and MP 5 on User's branch between Buckskin, Indiana, and Lynnville Mine,

Indiana) to the connections between the Subject Trackage and the industrial or loading and unloading tracks owned by Aluminum Company of America which serve Alcoa Generating, Inc. and between the Subject Trackage and the yard, industrial, loading and unloading tracks of The Yankeetown Dock, both in the vicinity of Newburgh, Indiana, a total distance of approximately 21.9 miles.

Section 2. USE OF SUBJECT TRACKAGE

A. User's use of Subject Trackage shall be in common with NSR and NSR's right to use the Subject Trackage shall not be diminished by this Agreement.

B. User shall have the right to operate in either direction over the Subject Trackage. User shall enter or exit the Subject Trackage only for the limited purposes specified in Section 1 of this Agreement and only at User's connection with NSR at Lynnvile Mine, Indiana or at the facilities of Alcoa Generating, Inc., or The Yankeetown Dock.

C. Except as may otherwise be provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein, upon prior approval of NSR, preclude the emergency use by User of such auxiliary trackage as may be designated by NSR for such purposes.

D. NSR shall have exclusive control of the management and operation of the Subject Trackage.

E. NSR may, at its discretion, admit other users to the Subject Trackage. NSR shall have the exclusive right to grant trackage rights of any nature to use the Subject Trackage to other persons.

F. User shall not have any claim against NSR 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.

G. User shall ascertain and abide by all height, weight, clearance, train length, speed, passing or other restrictions of NSR for the Subject Trackage, including without limitation any restrictions on operations in NSR's operating rules, timetables, bulletins, train orders, dispatching orders or other directions or orders of NSR supervisors.

Section 3. RESTRICTION ON USE

A. The Trackage Rights herein are granted for the sole purpose of User transporting over the Subject Trackage coal mined and loaded only at the current Somerville Mine (Indiana) of Black Beauty Coal Company or any successor to Black Beauty, until December 31, 2010, or until 20 million tons of coal have moved under this Agreement (termination in 2010 or 20 million tons is not acceptable, whichever is later, only to Alcoa Generating, Inc., or The Yankeetown Dock in the vicinity of Newburgh (Warrick), Indiana, as they exist on the date of this Agreement (and returning related empty equipment to the Somerville Mine). The Trackage Rights shall also expire after a period of dormancy not acceptable on expiration, as further defined in Section 16 of this Agreement.

B. User shall not transport any other commodity nor shall User perform any other overhead or local freight service whatsoever at, from or to any point, or between any points, located on the Subject Trackage.

Section 4. MISCELLANEOUS SPECIAL PROVISIONS

A. When operating over the Subject Trackage, User's locomotives and crews must be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.

B. Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage of the Subject Trackage will be subject to the approval of NSR's representative or his designee. NS agrees that ISRR trains will be handled by NS dispatcher in a fair and impartial manner.

C. Before User enters upon the Subject Trackage with its trains, User must verify with NSR that User has the ability to make a complete and continuous, uninterrupted movement over the Subject Trackage between its trackage and the facility of either Alcoa Generating, Inc. or The Yankeetown Dock, or both, unless directed to the contrary by NSR. User shall advise NSR of the number of loaded cars on each train entering the Subject Trackage, and shall also report the number of such cars monthly as provided in Section 5.

Section 5. COMPENSATION

A. The Current Charge to be paid by User for the Subject Trackage Rights covered by this Agreement shall be twenty-eight dollars (US \$28.00) what is this rate based on ?? per loaded rail car. The Current Charge shall be adjusted effective on the first calendar day of each quarter in accordance with the provisions of Section 5C below.

B. User shall furnish NSR, by the 15th day of the following month, monthly counts of loaded rail cars handled by User over the Subject Trackage. NSR, unless User remits its payment with such monthly statement, shall bill User promptly after receipt of such monthly statement.

C. The Current Charge for use of the Subject Trackage, set forth in Section 5A above, shall be revised upward or downward quarterly (this is outrageous to increase by quarter, by 100% (again outrageous) of the percentage change in the Rail Cost Adjustment Factor Unadjusted (RCAF (Unadjusted)) from one quarter to the next quarter as approved by the Surface Transportation Board, with the charges not to be adjusted lower than the base rates. In computing the adjusted charges, any fraction less than one-half shall be dropped and any fraction equal to or greater than one-half shall be increased to the next whole number. Adjustments shall be effective on the first day of each calendar quarter, starting with the second quarter 2002 adjustment, applicable to the third quarter 2002 charges. In the event this RCAF factor is not available for any reason, during a quarterly period, then the parties shall use the *AAR All Inclusive Index of Railroad Input Costs* or, if that index is also not available, the *AAR Railroad Cost Recovery Index for the United States*. If none of these indexes is available, the parties will agree to use the nearest substitute index published by the United States Department of Commerce or successor agency. If the parties cannot agree within 60 days on a substitute index, they shall have an arbitrator chosen under Section 17 of this Agreement select a substitute index that would yield results as close as possible to those produced by the RCAF-U. The new index will be applied retroactively (no retroactive adjustment) to any past quarter in which an adjustment was not possible because of lack of an index. Deficit charges may be billed and shall be paid in accordance with this Agreement after the new index is established.

Section 6. PAYMENT OF BILLS

A. All payments called for under this Agreement may be billed monthly and shall be paid within thirty (30) days after the date of the 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.

B. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, including computation of compensation to NSR for use of the Subject Trackage, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of the billing.

C. Bills rendered pursuant to the provisions of this Agreement, other than those provided for in Section 5, shall include direct labor and material costs,

together with the surcharges, overhead percentages and equipment rentals as specified by NSR (as specified by NS? These rates need to be governed by the RCCR index or some other railroad accepted practice not by NS whims and wishes. at the time any work is performed by NSR for User or shall include actual costs and expenses, upon mutual agreement of the parties.

Section 7. MAINTENANCE OF SUBJECT TRACKAGE

NSR shall maintain, repair and renew the Subject Trackage with its own supervision and labor. NSR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but NSR does not guarantee the condition of the Subject Trackage, the level of maintenance of the Subject Trackage or that operations thereover will not be interrupted. NSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use its best efforts to avoid such interruptions. NSR shall not be required to maintain the track at a level or standard higher than that physically or financially required by NSR for its own business.

Section 8. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

A. Existing connections or facilities, which are jointly used by the parties hereto under existing agreements, 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 such agreements. If User shall desire a new or upgraded connection or other facility, NSR will approve such improvement if it does not adversely affect NSR's operations and shall furnish the labor and materials for the construction on NSR's property as available, at User's sole cost and expense. User shall furnish labor and materials, at its cost, for construction on User's or a third party's property. User shall pay NSR for all maintenance expense for new or upgraded connections or facilities.

Section 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

NSR, from time to time and at its sole cost and expense, may make changes in, additions and betterment 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.

Section 10. 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, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless NSR and its parent corporation, subsidiaries, affiliates and partners and all of their respective directors, officers, agents, employees and partners from and against all claims, demands, costs, expenses, obligations, fines, penalties and liabilities (including reasonable attorney fees and expenses and court and litigation costs) imposed upon NSR or its parent corporation, subsidiaries, affiliates or partners or their respective directors, officers, agents, employees and partners under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable 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, timetables, notices, bulletins, orders, and other regulations and procedures of NSR, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NSR. User's trains shall not include locomotives, cars or equipment 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, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations without the prior consent of NSR.
- C. User shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and User shall pay to NSR, upon receipt of bills therefor, any cost incurred by NSR in connection with the qualification of such employees of User, as well as the cost of pilots furnished by NSR, until such time as such employees of User are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated.

D. If any employee of User shall neglect, refuse or fail to abide by NSR's rules, instructions and restrictions governing the operations on or along the Subject Trackage, either party may deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User. Should NSR deem it necessary to hold a formal investigation, upon notice presented in writing from NSR to User, User shall promptly hold an investigation in which all parties concerned shall participate. Each party shall bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations, to User's employees, shall be given by User's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between User and its employees. If the result of such investigation warrants, such employees shall upon written request by NSR be withdrawn by User from service on the Subject Trackage, up to and including prohibition from working on the Subject Trackage, and User shall release and indemnify NSR from and against any and all claims and expenses because of such withdrawal.

E. The trains, locomotives, cars and equipment of User, NSR, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.

F. In the event that a train of User shall be forced to stop on the Subject Trackage, 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 NSR (what speed is required?) on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, NSR shall have the option to furnish motive power or such other assistance 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 NSR for the full cost of rendering any such assistance, or of any agents or contractors who are engaged to render such assistance.

G. 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 NSR or its agents or contractors, and User shall reimburse NSR for the cost thereof.

H. In the event NSR and User agree that NSR 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 NSR and which would not have been incurred had the retained or additional employees not been provided.

Section 11. 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 User directly.

Section 12. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, NSR or its agent or contractor shall perform or provide such service, including the repair and restoration of roadbed, trackage 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 Section 13 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is 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.

Section 13. LIABILITY

A. This Section 13 is intended to allocate, between the parties, the responsibility for death, personal injury, or property damage arising from the operations contemplated by this Agreement. Nothing in this Section 13 shall be construed to create or confer any right or cause of action on any person not a party to this Agreement.

B. Liability for (a) personal injury to or death of any person, (b) damage to the real or personal property of any person (including, but not limited to, that of the parties), (c) punitive or exemplary damages, and (d) environmental investigation, cleanup, removal, containment, or remediation expenses, including any costs arising under the environmental laws of the United States or the comparable laws of any State or local government, shall be determined as follows:

(i) Each party shall be responsible, without regard to fault, for damage to its own equipment, its own property, for lading in its possession, and for the death of or injury to its own employees. For the purposes of this Section 13, pilots furnished by NSR to User pursuant to this Agreement shall be considered employees of User while such pilots are on or about the equipment or premises covered by this Agreement. For purposes of this Section 13, the trains, cars, operations and employees of any other present or future tenant of the Subject Trackage shall be considered the trains, cars, operations and employees of NSR.

(ii) Except as provided in Section 13(B)(i), each party shall be separately responsible, without regard to fault of either party, for all liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, when such death, personal injury, or property damage results solely from the trains, operations, or employees of that party without the involvement of the trains, operations, or employees of the other party.

(iii) Except as provided in Section 13(B)(i), liability for death, personal injury, or damage to property sustained or incurred by any person who is not a party to this Agreement, resulting from the trains, operations, or employees of both parties shall be divided equally between the parties hereto, without regard to the fault of either party. Something appears to be missing in this paragraph- under what circumstance would we take this responsibility??

(iv) The terms "liability", "damage", "damages", or "injury" as used in this Section 13 shall include related court or arbitration costs, expenses, and attorney's, witnesses' and experts' fees and costs of handling, defending, settling or paying any claim,. Liability shall not include fines and penalties, which shall always be paid by the party against whom they were assessed.

(v) Under no circumstances will either of the parties to this Agreement assert a claim for punitive or exemplary damages against the other party.

C. Process.

(i) Whenever any liability is imposed upon a party under the provisions of this Section 13, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement from and against that liability.

(ii) If any suit or action is brought against either NSR or User for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, the other party shall be given prompt written notice by the party sued, and the party so notified must either assume responsibility for the defense of the suit or participate in its defense, as may be appropriate.

D. Notwithstanding any other provisions of this Agreement, each party shall be responsible for liability for any death, personal injury, or damage to property to the extent such death, personal injury, or damage to property was caused by acts or omissions of any of that party's employees while under the influence of drugs or alcohol. A FRA positive test for drugs or a FRA alcohol test of .04 or greater shall establish that an employee was "under the influence of drugs or alcohol," for the purposes of this Section 13.

Section 14. CLAIMS

A. The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant Association of American Railroads (AAR) rules and formulas in providing for the allocation of losses which are either of undetermined origin or in cars handled in interline service by or for the account of the parties. Why are we including loss and damage in a trackage rights agreement?

B. Each party shall indemnify and hold harmless the other parties 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 or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees. ISRR employees will lose work if the 2010 termination? We do not want labor protection.

SECTION 15. INSURANCE

A. User shall procure and maintain in effect during the life of this Agreement a policy or policies of insurance covering the liability to which it is or may be subject under Section 13 hereof. Such insurance shall provide minimum limits of Five Million Dollars (\$5,000,000) per occurrence but may be subject to an annual aggregate limit of Five Million Dollars (\$5,000,000) and a per occurrence deductible not in excess of Twenty-Five Thousand Dollars (\$25,000). Our SIR is \$750,000 therefore the \$25,000 deductible will not work.

B. If the insurance provided under this Section 15 takes the form of a Claims Made Policy, User agrees to purchase whatever supplemental coverage may be necessary to provide continuous supplemental coverage of its potential liability under this Agreement, with annual occurrence and annual aggregate limits no less than those required hereunder, for a period of time at least three years (3 years is standard in the industry) following the termination of this Agreement.

C. On or before any anniversary date of this Agreement which occurs more than one (1) year after its Commencement Date, NSR may require an increase in the amount of insurance coverage required by this Section 15, or changes in the terms and conditions of the policy or policies, provided the amount of the increase does not exceed an average of Two Million Dollars (\$2,000,000) for each year that this Agreement has been in effect.

D. Every policy of insurance obtained by User pursuant to the requirements of this Section 15 shall contain provisions requiring that the insurance carriers give NSR at least thirty (30) days notice, in writing, of any proposed policy cancellation and of any material modification of the terms and conditions of the policy. The terms and conditions of each policy of insurance obtained by User to satisfy the requirements of this Section 15 will be subject to the approval of NSR.

E. Within thirty (30) days of execution of this Agreement, and within thirty (30) days of any subsequent renewals of, or material changes to (whether or not during the term of the policy or when it is renewed), the applicable insurance, User will furnish the Director – Risk Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, with certificates of insurance evidencing the required insurance coverage. Compliance with this requirement will not relieve User of any other obligation under this Agreement and will in no way limit or modify User's obligation to provide the specific insurance coverage required by this Agreement.

Section 16. TERM, DEFAULT AND TERMINATION

A. This Agreement shall become effective (hereinafter "Commencement Date") as of the first date signed by both NSR and User, and following receipt of regulatory approvals and following the expiration of any time periods required by the issuance of labor notices by NSR and User, and shall remain in full force and effect until December 31, 2010, whichever is later, subject also to the following dormancy provision. This Agreement shall expire if at any time after December 31, 2010, User shall not transport at least one loaded 40-car train of coal per week to a permitted receiver on the Subject Trackage from the Somerville Mine, excepting such weeks as contain miners' holidays, Thanksgiving, Christmas and New Years. This is absurd.

B. The parties anticipate that certain regulatory filings will be required of User to cause this Agreement to become or remain effective, and such filings shall be at the sole cost and expense of User.

C. Termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination thereof.

D. In the event of any substantial failure on the part of User to perform its obligations provided under the terms of this Subject Trackage Rights Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from NSR, NSR shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by NSR of any prior breach thereof, to terminate the Agreement. The exercise of such right by NSR shall not impair its rights under this Agreement or any cause of action it may have against User for the recovery of damages.

E. The rights, benefits, duties and obligations running from or to User, except to a controlled subsidiary under this Agreement, shall in all events expire (except liabilities incurred prior to termination) upon termination of this Agreement.

F. The parties shall remain liable for any accrued obligations under this Agreement, upon its expiration or termination.

Section 17. ARBITRATION; LITIGATION

A. Any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through binding arbitration by a sole, disinterested arbitrator to be selected jointly by the parties. If the parties fail to select such arbitrator within sixty (60) days after demand for arbitration is made by either party hereto, and then they shall jointly submit the matter to 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, exhibits and counsel. The compensation, costs and expenses 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 laws or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision or award of the arbitrator. All proceedings, testimony, submissions of the parties and award of the arbitrator shall be private and confidential between the parties and shall not be disclosed to another party, except in connection with a judicial action to enforce, vacate or modify the arbitration award or as required by law, but under the strictest confidentiality agreements or protective order the party can obtain.

B. Notwithstanding the foregoing arbitration provision, at its option, NSR may bring a court action seeking the collection of any amount of money due and payable for charges provided for under this Agreement or for the enforcement of User's obligations under Section 22 of this Agreement.

Section 18. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto including any person, firm or corporation succeeding to the ownership of substantially all of the assets or business of User or into which User is merged or consolidated; provided, however, that User shall not in any manner transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, or corporation without obtaining the prior written consent of NSR.

Section 19. NOTICE

Any notice required or permitted to be given by one party to another 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 User: Vice President & Regional General Manager
Indiana Southern Railroad, Inc.
497 Circle Freeway Drive, Suite 230
Cincinnati, OH 45246

If to NSR: Vice President, Transportation-Operations
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510-2191

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

Section 20. GENERAL PROVISIONS

A. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any 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 all 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 Section headings are inserted for convenience only and shall not affect any 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 another 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; none of whom shall be considered the drafter for purposes of contract construction.

H. No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling, and subject to the strictest confidentiality agreements and protective orders the party can obtain.

Section 21. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other party shall also extend to and indemnify the parent corporation, subsidiaries, affiliates and partnerships of such other party, and all of their respective directors, officers, agents, employees and partners.

Section 22. ABANDONMENT OF SUBJECT TRACKAGE

A. User shall have the right, subject to securing any necessary regulatory approval, to discontinue its use of the Subject Trackage or any portion thereof. NSR shall have the right, subject to securing any necessary regulatory approval, to abandon its use of the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, NSR 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. User shall file for discontinuance of its use of the Subject Trackage simultaneously with NSR's filing for abandonment if it does not desire to purchase the Subject Trackage under the procedures set forth below.

B. If User desires to purchase the Subject Trackage (or portion thereof), it shall submit an Offer of Financial Assistance under 49 U.S.C. Section 10904. In the event that the offer meets the requirements of Section 22A and NSR receives more than one offer, NSR, if User is the only tenant utilizing the Subject Trackage (or portion thereof), will 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. We should have first right of refusal if NS abandons.

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 NSR 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 the sale, withdraws its Offer of Financial Assistance, or

(iv) User, having requested the proper regulatory authority the proper regulatory authority should be defined the STB or its successor to establish the terms and conditions of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

D. 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.

E. In the event any application filed by NSR is granted but an application filed by User under this Section 22 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 a portion thereof) to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.

F. In the event NSR abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of 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, if NSR, at its sole option, makes the property available for sale to User.

E. In the event NSR's application for authority to abandon is denied, User will withdraw any offer of financial assistance or other purchase application it has filed under this Section 22.

F. Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Section 22 result in an obligation imposed by any competent authority on any party 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.

(This space intentionally left blank.)

G. When under any provision of Section 16 of this Agreement, the term of this Agreement expires, terminates or is terminated, or if the Agreement is terminated by NSR for default, User shall file a notice, petition or application to discontinue we don't want to file a discontinuance its trackage rights under this Agreement over the Subject Trackage within 60 days of other termination date.

When a date for or event causing termination occurs, User shall discontinue its use of the Subject Trackage and apply for necessary regulatory authority without further claim of right to use the Subject Trackage or rights under this Agreement. In the event that User fails to file for appropriate regulatory approval or to abide by any term of any paragraph of Section 22 of this Agreement, ///User hereby appoints NSR, at User's sole cost and expense, to file and confess judgment against User for enforcement of the provisions of this Section 22, // "to file and confess"-we are not giving NS authority to file for us—again this is absurd and, at User's sole cost and expense, including without limitation attorney fees and filing fees, to file a discontinuance or abandonment notice, petition or application at the Surface Transportation Board or any successor agency having jurisdiction seeking authority to discontinue or abandon User's regulatory authority or other rights to operate over the Subject Trackage or to maintain this Agreement. We are not giving NS the right to file with the STB for our Discontinuance.

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

WITNESS

INDIANA SOUTHERN RAILROAD, INC.

By _____

Title _____

WITNESS

NORFOLK SOUTHERN RAILWAY
COMPANY

VERIFICATION

State of Florida)
)ss
County of Palm Beach)

I, SANDRA K. FRANGER, being duly sworn, depose and state that I am Vice President-
Contracts & Intercarrier Agreements of the Indiana Southern Railroad, Inc., that I am authorized
to make this verification, and that I have read the foregoing Notice of Exemption, and know the
facts asserted therein are true and accurate to the best of my knowledge, information and belief.

Sandra K. Franger

Subscribed and sworn to before me this 21st day of June 2002.

Nancy J. O'Connor
Notary Public



Commission # CC 99003
Expires Feb. 4, 2005
Bonded Thru
Atlantic Bonding Co., Inc.

My Commission expires: _____