

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

304648
ENTERED
Office of Proceedings
May 27, 2022
Part of
Public Record

William A. Mullins

Direct Dial: (202) 663-7823
E-Mail: wmullins@bakerandmiller.com

May 27, 2022

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Evansville Western Railway, Inc. – Temporary Trackage Rights
Exemption – Illinois Central Railroad Company, FD 36622

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Brown:

Enclosed for filing in the above proceedings is a notice of exemption (“Notice”) filed under 49 C.F.R. §1180.2(d)(8), whereby Evansville Western Railway, Inc. (“EVWR”), seeks temporary overhead trackage rights over an approximately 11.7-mile line of railroad of Illinois Central Railroad Company (“CN”) between Sugar Camp, Illinois (Milepost 61.9), and Dial, Illinois (Milepost 73.6). These temporary overhead trackage rights are necessary to permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial until the Sugar Camp Mine reopens following its closure due to a mine fire and the unrelated, but necessary relocation of long wall mining equipment.

Also enclosed is a petition (“Petition”) by which EVWR requests that the Board waive the 30-day effectiveness period specified by 49 C.F.R. § 1180.4(g) to permit the temporary trackage rights notice of exemption to become effective immediately.

Finally, a Motion for Protective Order (“Motion”) is also enclosed. EVWR and CN wish to protect the terms of the trackage rights agreement relating to EVWR’s payments for operating over CN’s line. Thus, EVWR has redacted the Trackage Rights Agreement (“Agreement”) in the Notice and concurrently filed an unredacted, confidential version of the Agreement under

FEE RECEIVED
May 27, 2022
SURFACE
TRANSPORTATION BOARD

FILED
May 27, 2022
SURFACE
TRANSPORTATION BOARD

BAKER & MILLER PLLC

May 27, 2022

Page 2

seal, subject to the Board's issuance of the protective order sought by EVWR to protect highly confidential and proprietary information contained therein.

EVWR seeks expedited consideration of the Notice, Petition, and Motion.

Pursuant to 49 C.F.R. §1002.2(f)(40)(iv), a filing fee of \$1,400 has been paid. If there are any questions concerning these filings, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

/s/ William Mullins

William A. Mullins

Amber L. McDonald

BAKER & MILLER PLLC

2401 Pennsylvania Ave., NW

Suite 300

Washington, DC 20037

Tel: (202) 663-7820

Fax: (202) 663-7849

Attorneys for Evansville Western Railway, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

**William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com**

***Counsel for Evansville
Western Railway, Inc.***

Dated: May 27, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

Evansville Western Railway, Inc. (“EVWR”), a Class II rail carrier, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for the acquisition of temporary overhead trackage rights over an approximately 11.7-mile line of railroad of Illinois Central Railroad Company (“CN”) between Sugar Camp, Illinois (Milepost 61.9), and Dial, Illinois (Milepost 73.6). The proposed temporary overhead trackage rights are necessary due to the temporary closure of the Sugar Camp Mine, as the result of a mine fire and the unrelated, but necessary relocation of long wall mining equipment.¹ The closure has removed millions of tons from the market, and these temporary trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial until the Sugar Camp Mine reopens. The temporary trackage rights will expire no later than July 15, 2022.²

Due to the urgent need for these operations, EVWR is concurrently filing a petition for waiver of the 30-day effectiveness period specified by 49 C.F.R. 1180.4(g) to permit the proposed

¹ The Sugar Camp Mine consists of two separate mines, M Class and Viking. M Class was forced to shut down due to a fire at the mine. Viking, which is a major supplier to coal-fired generating stations in the Southeast, must now close to accommodate the relocation of long wall mining equipment to another location at the mine.

² EVWR’s temporary trackage rights are subject to early termination per the terms of the written Temporary Trackage Rights Agreement (“TRA”) between the parties dated as of May 23, 2022, which provides that the temporary trackage rights granted to EVWR shall expire and terminate on the earlier of: (i) July 15, 2022, or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal.

temporary trackage rights to become effective immediately. EVWR is also concurrently filing a Motion for Protective Order to protect from public disclosure the financial terms of the TRA.

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

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

EVWR is a Class II common carrier shortline railroad operating in the southern Illinois and Indiana region. It is one of three regional railroad subsidiaries owned and operated by P&L Transportation. The proposed temporary overhead trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine near Dial, IL until EVWR's service at the Sugar Camp Mine can be restored following closure due to a mine fire and the unrelated, but necessary relocation of long wall mining equipment. Because the Sugar Camp Mine is expected to remain inoperable for several weeks, EVWR has entered into the written TRA with CN by which EVWR will be granted the temporary, nonexclusive right to operate, in overhead freight service only to load unit trains of coal at the Pond Creek Mine, its trains, locomotives, cars, and equipment with its own crews, between CN's connection with Sugar Camp Mine trackage at or near Milepost 61.9 at South Sugar Camp in Sugar Camp, IL and CN's connection with Pond Creek Mine trackage at or near Milepost 73.6 at Dial in Dial, IL on CN's Bluford Subdivision, a distance of approximately 11.7 miles. Given the urgent situation, EVWR is concurrently filing a petition for waiver of the 30-day effectiveness period specified by 49 C.F.R. 1180.4(g) to permit the proposed temporary trackage rights to become effective immediately.

Pursuant to 49 C.F.R. § 1180.2(d)(8), and as provided in the TRA, the temporary trackage rights authorized herein will automatically expire no later than July 15, 2022. *See Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003).

The full name and address of EVWR is as follows:

Evansville Western Railway, Inc.
818 West 2nd Street
Mt. Vernon, IN 47620

Any questions concerning this Notice should be sent to EVWR's representatives at the following address:

William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com

Counsel for Evansville Western Railway, Inc.

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

Pursuant to the petition for waiver filed concurrently to this notice, EVWR intends to consummate the temporary trackage rights proposed in this notice immediately on issuance of a Board waiver decision. In the absence of such a decision, EVWR would consummate the temporary trackage rights thirty (30) days after the date of this notice.

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

The proposed temporary overhead trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine, which has been shut down due to a mine fire and the unrelated, but necessary relocation of long wall mining equipment. The closure has removed millions of tons from the market, and these temporary trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine until the Sugar Camp Mine reopens.

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

EVWR owns and operates over rail property in the States of Illinois and Indiana.

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

A map of the rail line over which EVWR proposes to acquire temporary trackage rights is attached hereto as Exhibit 1.

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

A redacted copy of the TRA dated as of May 23, 2022, between EVWR and CN is attached hereto as Exhibit 2. An unredacted copy of the TRA is being filed as a highly confidential document in conjunction with EVWR's concurrent filing of a Motion for a Protective Order.

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

As a condition to this exemption, EVWR agrees to the employee protective conditions established in *Norfolk and Western Ry. Co. -- Trackage Rights -- BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc. -- Lease and Operate*, 360 I.C.C. 653 (1980). EVWR's discontinuance of operations upon expiration of the temporary trackage rights on or before July 15, 2022, will be subject to the employee protective conditions established in *Oregon Short Line R. Co. -- Abandonment -- Goshen*, 360 I.C.C. 91 (1979). See *Railroad Consolidation Procedures*, 7 S.T.B. 587 (2004).

Trackage Rights Information: 49 C.F.R. § 1180.4(g)(1)(ii)

- (A) The tenant railroad is Evansville Western Railway, Inc.
- (B) The landlord railroad is Illinois Central Railroad Company.
- (C) EVWR will obtain temporary, nonexclusive limited overhead trackage rights on CN's Bluford Subdivision between CN's connection with Sugar Camp Mine

trackage at or near Milepost 61.9 at South Sugar Camp in Sugar Camp, IL and CN's connection with Pond Creek Mine trackage at or near Milepost 73.6 at Dial in Dial, IL for the sole purpose of loading unit trains of coal at the Pond Creek Mine.

- (D) The proposed temporary trackage rights will be consummated immediately upon the effectiveness of a Board decision granting the accompanying petition for waiver, or 30 days after the filing of this notice, whichever is sooner.
- (E) The proposed temporary trackage rights will automatically expire no later than July 15, 2022.

Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(2)

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of temporary trackage rights by EVWR is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), EVWR's proposed temporary trackage rights also are exempt from historic preservation reporting requirements.

Respectfully submitted,

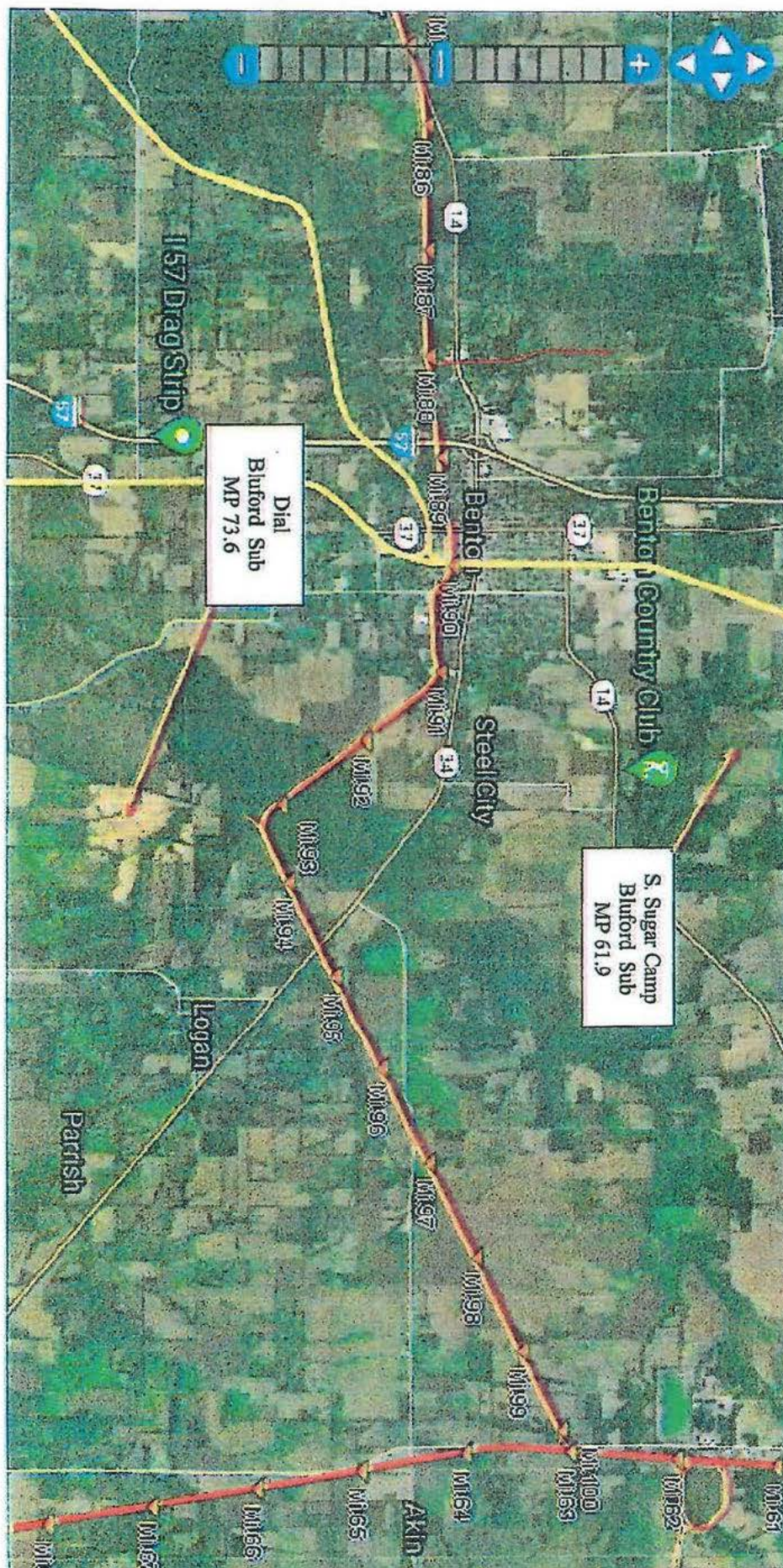
/s/ William Mullins

William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com

Counsel for Evansville Western Railway, Inc.

Dated: May 27, 2022

Exhibit A



TEMPORARY TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT (Agreement") entered into as of this 23rd day of May 2022, by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "CN" or "OWNER") and **EVANSVILLE WESTERN RAILWAY, INC.** (hereinafter referred to as "EVWR" or "USER"). Each of EVWR and CN shall individually be referred to as a "Party" and collectively as the "Parties".

WHEREAS, CN owns and operates a segment of railroad located between Sugar Camp Mine in Sugar Camp, IL and Pond Creek Mine in Dial, IL on CN's Bluford Subdivision; and

WHEREAS, EVWR desires to obtain limited temporary overhead trackage rights between Sugar Camp Mine and Pond Creek Mine for the sole purpose of loading Unit Coal Trains at Pond Creek Mine during the temporary closure of the Sugar Camp Mine due to a long wall move; and

WHEREAS, CN agrees to grant EVWR limited temporary overhead trackage rights subject to the terms and conditions as set forth herein:

NOW THEREFORE, the parties hereto, intending to be legally bound, agree that the recitals and the introductory paragraphs above are hereby incorporated and made a part of this Agreement and the parties further agree as follows:

SECTION 1.0 GRANT OF TEMPORARY TRACKAGE RIGHTS

1.1 Expressly subject to EVWR's procurement of Surface Transportation Board ("STB") temporary trackage rights exemption authority in accordance with Section 16.1 allowing the rights granted herein to expire on the earlier of the dates specified in Section 3.9, and subject to the terms and conditions otherwise herein provided, Owner hereby grants to User the temporary nonexclusive right to operate, in freight service only to load unit trains of coal at the Pond Creek Mine, its trains, locomotives, cars, and equipment 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 "A" (hereinafter referred to as the "Subject Trackage"):

- Between CN's connection with Sugar Camp Mine at or near Milepost 61.9 at South Sugar Camp in Sugar Camp, IL and CN's connection with Pond Creek Mine at or near Milepost 73.6 at Dial in Dial, IL on CN's Bluford Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 11.7 miles.

SECTION 2.0

USE OF SUBJECT TRACKAGE

2.1 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.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, interchanging, staging, storage or servicing of cars or equipment, 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 tracks as may be designated by Owner for such purpose.

2.3 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.

2.4 User shall have the right to operate in either direction over the Subject Trackage.

SECTION 3.0

RESTRICTION ON USE

3.1 The temporary trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

3.2 EVWR's use of the temporary trackage rights granted herein by CN shall be limited to two (2) pair of trains (two trains in each direction) per day to be operated at times agreed upon in advance by CN and EVWR operating managers for the sole purpose of EVWR delivering or receiving unit coal trains loaded at the Pond Creek Mine on Pond Creek trackage beyond the Subject Trackage. Additional trains may be handled under this Agreement but shall be at the sole discretion of CN.

3.3 EVWR shall not connect or interchange with any other railroad at any location along the Subject Trackage other than at the points defined in Section 1 on the Subject Trackage.

3.4 EVWR shall have sufficient fuel for the entire movement on CN.

3.5 EVWR shall ensure trains operated on the Subject Trackage are operating under Positive Train Control ("PTC"), with exception for certain trains with locomotives SVTX 1912, SVTX 1986, SVTX 1982, EVWR 4511, EVWR 4510, EVWR 4502, EVWR 4501, EVWR 4520, LTEX 8787, LTEX 8708, LTEX 8740, EVWR 6001, EVWR 6002, EVWR 6003, and EVWR 6004 which are excluded from PTC requirements.

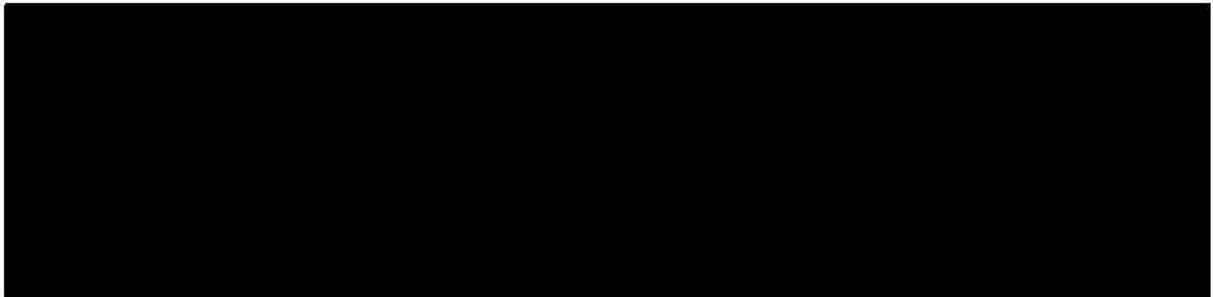
3.6 EVWR agrees that it shall: 1) not stage, hold, store, park or otherwise unreasonably interfere with the joint use of the Subject Trackage and 2) ensure that crews will have sufficient hours of service remaining to clear the Subject Trackage. EVWR will ensure that immediately upon arrival at South Sugar Camp or Dial, as the case may be, that EVWR's train will exit the Subject Trackage. If EVWR's train cannot complete its movement through the Subject Trackage for any reason, (i.e, hours of service, congestion, etc.), then such trains shall be held short of the Subject Trackage so as not to occupy or tie up the Subject Trackage for other users.

3.7 In the event EVWR's train is forced to stop on the Subject Trackage due to mechanical failure or for any other emergency and EVWR's train requires a recrew while operating on the Subject Trackage, EVWR will make the necessary arrangements with CN's Dispatcher to have a EVWR relief crew in position to relieve the EVWR crew prior to the arrival of EVWR train at the recrew location or the expiration of EVWR's crews hours of service. If EVWR doesn't have a crew available, if CN so elects, CN will recrew the EVWR train at the sole cost and expense of EVWR and move train to its destination on Subject Trackage or move train to a location where it can be held until such time as EVWR has a crew available to operate the EVWR train to destination on Subject Trackage. In the event CN elects to recrew a EVWR train the train shall still be considered a train of EVWR while the CN crew is on board the train for liability purposes.

3.8 EVWR shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own equipment over or upon the Subject Trackage, or any portion thereof, the equipment of any third party which in the normal course of business would not be considered the equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.

3.9 The temporary trackage rights granted herein to EVWR and this Agreement shall expire and terminate on the earlier of: (i) July 15, 2022 or (ii) the re-opening of the Sugar Camp Mine with sufficient production to fulfill the required requested loadings of unit trains of coal.

SECTION 4.0 COMPENSATION



SECTION 5.0

PAYMENT OF BILLS

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. 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.

5.2 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 three (3) years from the date of billing.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by one Party for the other Party.

SECTION 6.0

MAINTENANCE OF SUBJECT TRACKAGE

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, 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. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, Owner shall with reasonable diligence restore the Subject Trackage for the movement of cars.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

SECTION 7.0 MAINTENANCE OF CONNECTIONS

7.1 Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices 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 or practices.

SECTION 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

8.1 Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and 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.

8.2 If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

SECTION 9.0 MANAGEMENT AND OPERATIONS

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

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify Owner's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state 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 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 and affiliates, and all of their respective directors, officers, agents, or employees 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.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, 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 Owner. 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 determined by Owner, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any reasonable 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, such determination not to be unreasonably withheld, conditioned or delayed.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time

limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests 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.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess 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. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Subject Trackage by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 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 and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a

train or locomotive of User becomes stalled or unable to proceed under its own power, or 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 provided in Section 3.7 if User's train is going to interfere with the operation on the Subject Trackage) 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.

9.15 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.

9.16 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 additional employees, 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 additional employees not been provided.

SECTION 10.0 MILEAGE AND CAR HIRE

10.1 All mileage and car hire charges accruing on cars in User's account 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.

SECTION 11.0 CLEARING OF WRECKS

11.1 Whenever User's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, Owner shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever and injury to or 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 12 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 User.

SECTION 12.0 LIABILITY

12.1 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 allocated as follows:

12.2 If a Loss occurs from use of the Subject Trackage involving the trains, locomotives, engines and/or employees of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.

12.3 If a Loss occurs from use of the Subject Trackage involving the trains and locomotives of both Parties, then: (i) each Party shall be solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

Any damage of the environment, including without limitation land, air, water wildlife, and vegetation, occurs with both Owner and User's traffic being involved, then as between themselves, (i) Owner shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such Owner's traffic and/or Owner's locomotive from which there is a release, (ii) User shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such User's traffic and/or a User's locomotive from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in equipment in the revenue waybill and car hire accounts or locomotives of both Owner and User from which there was a release, shall, to the extent not allocable under subparagraphs (i) and (ii) to the substance released, be shared by the parties in proportion to the total number of cars, in the revenue waybill and car hire account of each party, or equipment or locomotives of the respective parties, from which there was such release.

12.4 If a Loss occurs from the use of the Subject Trackage involving both User and any other third party user of the Subject Trackage not a party to this Agreement, then User's responsibilities for the Loss shall be apportioned in the manner specified in Subsection 12.3 with the other party user being considered Owner for the purpose of determining User's share of that portion of the Loss which it must assume.

12.5 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, 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.

12.6 In every case of death or injury suffered by an employee of either Party, 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.

12.7 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 board or getting on or off trains of User, and as otherwise on duty as pilots for User.

12.8 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.

12.9 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

12.10 Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

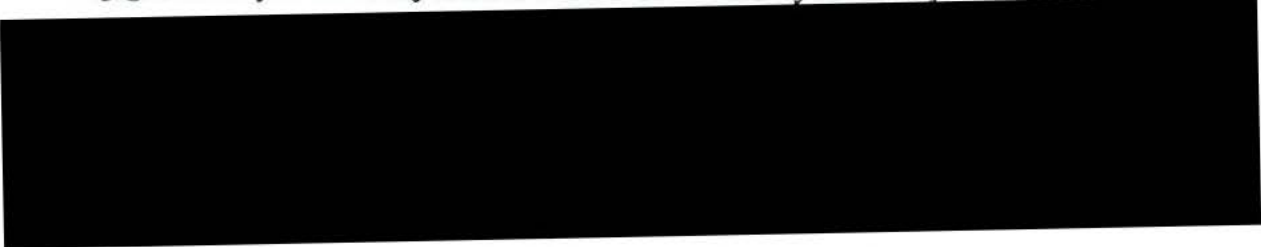
SECTION 13.0 INVESTIGATION AND CLAIMS

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, 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 therefore under the provisions of this Agreement.

13.2 Each Party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

13.3 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.

13.4 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 employees, including claim agents, attorneys, and other employees of either Party engaged directly or indirectly in such work shall be borne by such Party.



13.6 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, pursuant to a collective bargaining 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.

13.7 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 12 hereof.

SECTION 14.0 DEFAULT AND TERMINATION

14.1 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 fifteen (15) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving seven (7) 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. 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.

SECTION 15.0 ARBITRATION

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall

jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

SECTION 16.0 REGULATORY APPROVAL

16.1 Implementation of this Agreement will require the prior approval and authorization of the Surface Transportation Board ("STB") pursuant to an effective temporary trackage rights exemption obtained by User under 49 C.F.R. § 1180.2(d)(8) or, alternatively, an effective trackage rights exemption obtained by User under 49 C.F.R. § 1180.2(d)(7) accompanied by an effective partial revocation of the exemption allowing the rights granted herein to expire on the earlier of the dates specified in Section 3.9. User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such exemption or relief. Owner will assist and support efforts of User to obtain any such required exemption or relief, and shall be provided the reasonable opportunity to review and comment on all STB filings of User prior to submission.

16.2 Each Party shall assume and hold the other Party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

SECTION 17.0 [RESERVED]

SECTION 18.0 GENERAL PROVISIONS

18.1 This Agreement and each and every provision hereof are 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 in any third party to recover by way of damages or otherwise against either of the parties hereto.

18.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5 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, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or 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.

18.6 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.

18.7 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.

18.8 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a Party hereto to enforce its rights under this Agreement, during the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by either CN or EVWR to any Party other than CN's and EVWR's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other Party.

SECTION 19.0 SUCCESSORS AND ASSIGNS

19.1 No Party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation without obtaining the prior written consent of the other Party (ies) to this Agreement.

SECTION 20.0 NOTICE

20.1 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 mutually agree, and shall be addressed as follows:

If to Owner:

Region Director Contracts and Administration
Illinois Central Railroad Company
17641 South Ashland Avenue
Homewood, IL 60430

If to User:

Executive Vice President and Chief Operating Officer
Evansville Western Railway, Inc.

200 Clark Street
Paducah, KY 42003

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

SECTION 21.0 COMMENCEMENT, TERM AND TERMINATION

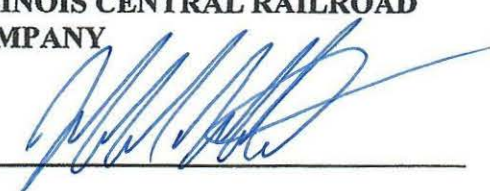
21.1 This Agreement shall take effect on the date first written above but operations hereunder may not commence until and unless the required regulatory exemption and/or relief contemplated by Section 16.1 is obtained and effective, as evidenced by appropriate decision or notice of the STB.

21.2 This Agreement shall continue in full force and effect until the earlier of the dates specified in Section 3.9, but may be earlier terminated by either Party upon ten (10) days written notice to the other Party.

21.3 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 either Party under the terms of this Agreement prior to the termination hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

**ILLINOIS CENTRAL RAILROAD
COMPANY**

By: 

Its: Region Director Contracts & Administration

Date: 5-25-22

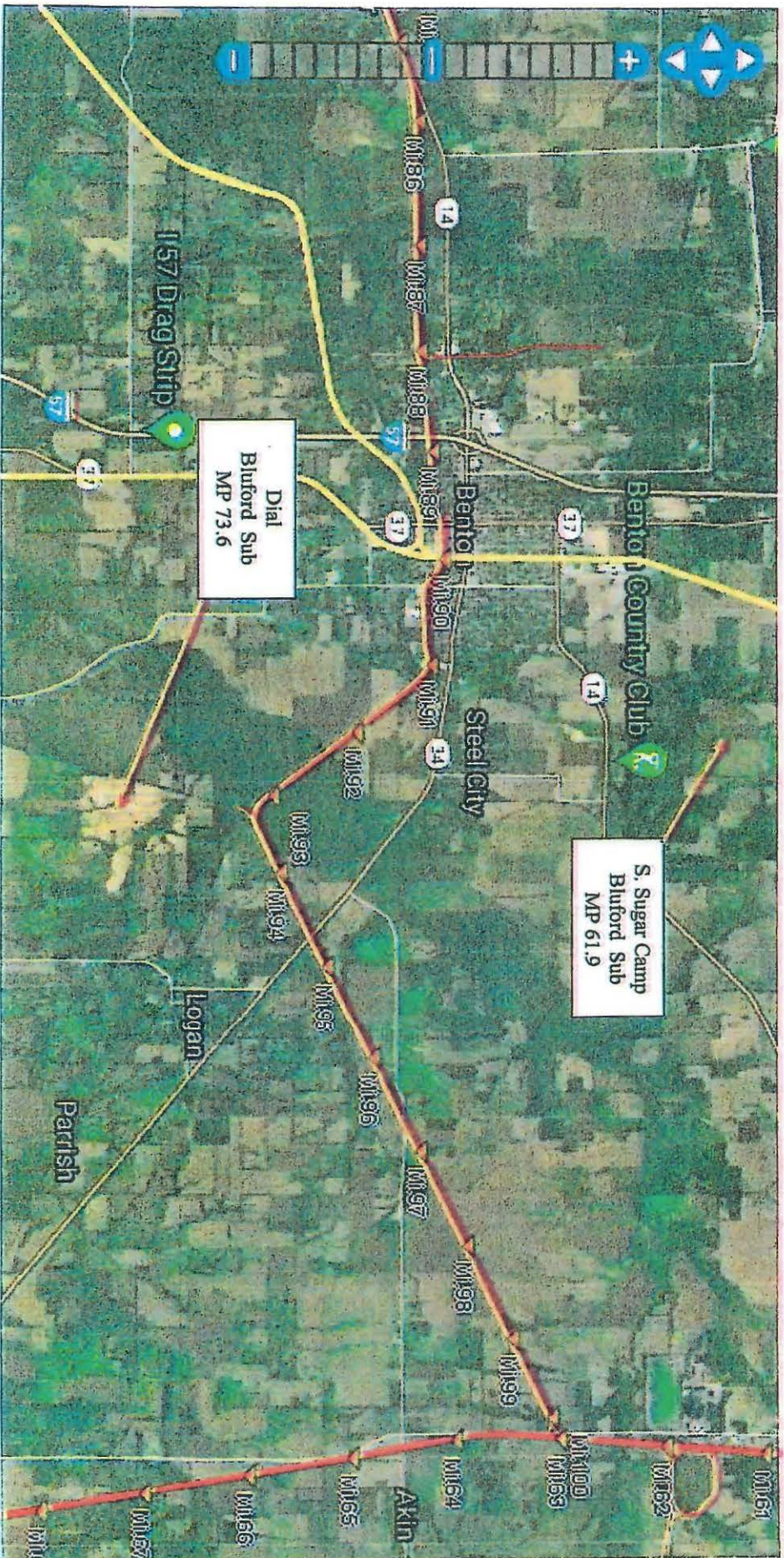
**EVANSVILLE WESTERN RAILWAY,
INC.**

By: 

Its: President & CEO

Date: 5/23/2022

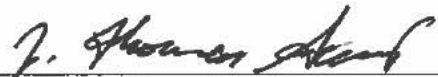
Exhibit A



VERIFICATION OF EVANSVILLE WESTERN RAILWAY, INC.

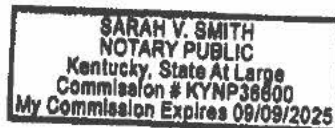
State of Kentucky)
)
County of McCracken) SS:

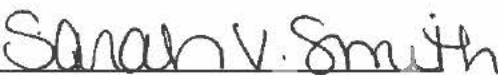
J. Thomas Garrett, being duly sworn, deposes and says that he is President and Chief Executive Officer of Evansville Western Railway, Inc., that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.



J. Thomas Garrett

SUBSCRIBED AND SWORN TO
before me this 27th day
of May, 2022.





Notary Public #KYNP36600

My Commission expires:

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

**PETITION FOR WAIVER AND
IMMEDIATE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

**William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com**

***Counsel for Evansville
Western Railway, Inc.***

Dated: May 27, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRackage RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

**PETITION FOR WAIVER AND
IMMEDIATE EFFECTIVE DATE**

EXPEDITED CONSIDERATION REQUESTED

Evansville Western Railway, Inc. (“EVWR”) hereby petitions the Surface Transportation Board (“Board”) to waive the 30-day effectiveness period specified by 49 C.F.R. § 1180.4(g) to permit the temporary trackage rights notice of exemption concurrently filed by EVWR over Illinois Central Railroad Company (“CN”) in this docket under 49 C.F.R. § 1180.2(d)(8) to become effective immediately. Waiver will accommodate EVWR’s urgent need to operate over CN’s line between Sugar Camp, Illinois (Milepost 61.9), and Dial, Illinois (Milepost 73.6), in order to create an accessible route between the Sugar Camp Mine and Pond Creek Mine during the temporary closure of the Sugar Camp Mine, as the result of a mine fire and the unrelated, but necessary relocation of long wall mining equipment. EVWR anticipates the need for temporary trackage rights operations will continue for several weeks. The closure has removed millions of tons of coal from the market, and these temporary trackage rights will permit EVWR to load Unit Coal Trains at Pond Creek Mine until the Sugar Camp Mine reopens, thereby minimizing, as much as possible, the impacts to customers while working through these disruptions. Expedited consideration of this petition is requested.

Under 49 C.F.R. § 1180.4(g), EVWR’s temporary trackage rights exemption would ordinarily not become effective until 30 days after the filing of the accompanying notice. Waiver of that period in the limited, exigent circumstances present here would help improve service during the period and reduce the impacts to EVWR’s customers. Allowing that exemption to become effective immediately is reasonable in this situation to accommodate EVWR’s urgent arrangements to meet customer transportation needs.

The Board has previously granted waivers “to minimize as much as possible the impacts of the situation on [applicant’s] customers.” See Alabama & Gulf Coast Railway LLC – Temporary Trackage Rights Exemption – The Kansas City Southern Railway Company, FD 36418 (STB served July 2, 2020); see also Union Pacific Railroad Company – Temporary Trackage Rights Exemption – BNSF Railway Company; FD 36425 (STB served Aug. 10, 2020) (granting petition for waiver where “bridge . . . taken out of service for repairs).

Accordingly, EVWR respectfully requests that the Board waive the 30-day effectiveness period specified by 49 C.F.R. § 1180.4(g) to permit the temporary trackage rights notice of exemption concurrently filed by EVWR in this docket under 49 C.F.R. § 1180.2(d)(8) to become effective immediately.

Respectfully submitted,

/s/ William Mullins

William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com

Counsel for Evansville Western Railway, Inc.

Dated: May 27, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

MOTION FOR PROTECTIVE ORDER

**William A. Mullins
Amber L. McDonald
Baker & Miller PLLC
Suite 300
2401 Pennsylvania Ave, N.W.
Washington, D.C. 20037
(202) 663-7823 (Direct)
(202) 663-7849 (Fax)
wmullins@bakerandmiller.com**

***Counsel for Evansville
Western Railway, Inc.***

Dated: May 27, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36622

**EVANSVILLE WESTERN RAILWAY, INC.
– TEMPORARY TRACKAGE RIGHTS EXEMPTION –
ILLINOIS CENTRAL RAILROAD COMPANY**

MOTION FOR PROTECTIVE ORDER

Concurrently with this filing, Evansville Western Railway, Inc. (“EVWR”) is filing a notice of exemption (“Notice”) in the above captioned proceeding seeking temporary trackage rights over a line of Illinois Central Railroad Company (“CN”). Consistent with 49 CFR 1180.6(a)(7)(ii), EVWR is filing both an unredacted and a redacted copy of the Temporary Trackage Rights Agreement dated as of May 23, 2022 between the parties, redacting key financial terms and nothing else. EVWR and CN wish to protect the redacted terms of the agreement from public disclosure and are thereby seeking issuance of a protective order.

The information redacted from the public version of the agreement is highly confidential and commercially sensitive, relating to compensation terms. The proposed protective order is necessary to protect this highly confidential information from public disclosure. The requested protective order will enable EVWR to file the unredacted agreement with the Board, and, upon appropriate request, to make that document available to outside counsel for interested parties, subject to signing the appropriate undertaking. The proposed protective order is consistent with other protective orders previously issued by the Board. Accordingly, EVWR hereby moves the Board pursuant to 49 CFR 1104.14(b) to enter a protective order (in the form set forth in the Appendix hereto) in the above-captioned proceeding, including the forms of confidentiality undertakings that accompany it.

Respectfully submitted,

/s/ William Mullins

William A. Mullins

Amber L. McDonald

Baker & Miller PLLC

Suite 300

2401 Pennsylvania Ave, N.W.

Washington, D.C. 20037

(202) 663-7823 (Direct)

(202) 663-7849 (Fax)

wmullins@bakerandmiller.com

Counsel for Evansville Western Railway, Inc.

Dated: May 27, 2022

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other databases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, or carriers, confidential financial and cost data, and other confidential or proprietary business or personal information
 - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with Paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) “Proceedings” means those before the Surface Transportation Board (“Board”) concerning the notice of exemption filed in FD 36622 and any related proceedings before the Board, and any judicial review proceedings arising from FD 36622 or any related proceedings before the Board.
2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as “CONFIDENTIAL.” Any information or documents designated or stamped as “CONFIDENTIAL” shall be handled as provided hereinafter.
3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or of a pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, trackage rights compensation levels or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped shall be handled as provided hereinafter.
4. Information and documents designated or stamped as “CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, or to any person or entity except to an

employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. Information and documents designated or stamped as “HIGHLY CONFIDENTIAL” may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this order.
6. Any party to these Proceedings may challenge the designation by any other party of information or documents as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL” by filing a motion with the Board or with an administrative law judge or other office to whom authority has been lawfully delegated by the Board to adjudicate such challenges.
7. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in FD 36622 or any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with FD 36622 and/or with any related proceedings.
8. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.
9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as “Confidential Materials Subject to Protective Order.” See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.
10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, “Confidential Materials Subject to Request for Protective Order,” and is accompanied by a

motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

11. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.
12. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in Paragraph 9 of this Protective Order.
13. To the extent that materials reflecting Confidential Information are produced by a party to these Proceedings, and are held and/or used by the receiving person in compliance with Paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and the data that the materials contain are deemed essential for the disposition of these and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or any other relevant provision of the ICC Termination Act of 1995.
14. Any party that files with the Board a document containing Confidential Information must simultaneously file with the Board a public version of that document.
15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.
16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

EXHIBIT A

UNDERTAKING CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order (served on _____, 2022 governing the production and use of Confidential Information and Confidential Documents in FD 36622, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36622, any related proceedings before the Surface Transportation Board, and/or any judicial review proceedings in connection with FD 36622 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that at the conclusion of these proceedings (including any proceeding or administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be sufficient remedy for breach of this Undertaking and that parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

EXHIBIT B

UNDERTAKING HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel] [consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2022, governing the production and use of Confidential Information and Confidential Documents in FD 36622, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in FD 36622 and any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with FD 36622 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees or my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as “HIGHLY CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this undertaking and that other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: